1896.

SUPREME COURT OF THE UNITED STATES.

No. 144.

MALCOM SMITH AND DANIEL CRAWFORD, EXECUTORS OF JOHN McNEILL, DECEASED, APPELLANTS,

vs.

DANIEL McNEILL.

APPEAL FROM THE DISTRICT COURT, U. S., MIDDLE DISTRICT OF ALABAMA.

INDEX.

	Original.	Print.
Bill of complaint	1	3
Subpœna and return	12	8
Order at rules	13	8
Judgment pro confesso	15	9
Affidavit of respondents	16	10
" of W. W. Morris	19	11
Answer of respondents	22	13
Exhibits	33	17
Judgment pro confesso set aside	43	22
Replication of complainant	44	23
Affidavits for continuance	46	24
Notice to complainant's counsel	50	25
Decretal order, referring certain matters to master	51	26
Subpœna for witnesses	54	27
Exhibits referred to in decree	55	28
Deposition of John Brown	76	37
" of David Lawring	77	37
" of Benjamin D. Thompson	79	38
" of Hamilton Thornton	81	39
" of James Cunningham	84	40
" of James L. Totton	85	41
" of Josiah S. Kennedy	89	43
Agreement of counsel	92	44
Transcript of the proceedings of the circuit court, Marshall county, Mississippi	95	44

[Gunnon, Print.]

	Original.	Print.
Depositions of sundry witnesses - - - - - -	115	54
Proceedings in clerk's office by agreement of counsel, in regard to matters referred to master - - - - - - -	210	92
Report of master - - - - - - - -	227	98
Exceptions to master's report - - - - - -	229	100
Petition for a rehearing - - - - - - -	236	101
" refused - - - - - - - -	241	103
Final decree - - - - - - - -	241	103
Appeal prayed and granted - - - - - -	243	104
Appeal bond - - - - - - - -	245	104
Clerk's certificate - - - - - - - -	247	105

United States of America,
Middle district of Alabama.

At a district court of the United States, for the middle district of Alabama, begun and held at Montgomery, on the first Monday after the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-eight.

The honorable William Crawford, judge of said court, not being present, the marshal adjourned the court until to-morrow morning, ten o'clock.

Tuesday, *December 5th*, 1848.

The honorable William Crawford, judge of said court, not being present, the marshal adjourned the court until to-morrow morning, ten o'clock.

Wednesday morning, *Dec. 6th*, 1848.

Present, the honorable William Crawford, judge of said court.

Bill in chancery.

District court of the United States, for the middle district of Alabama.

Paragraph I. To the judge of the district court of the United States, for the middle district of Alabama, Daniel McNeill, a citizen of the county of Marshall, in the State of Mississippi, brings this his bill against Malcom Smith and Daniel Crawford, citizens of the State of Alabama, residing, the said Smith in the county of Autauga, and the said Crawford in the county of Coosa, executors of the last will and testament of John McNeill, deceased, late a resident and citizen of the said county of Coosa.

And thereupon your orator complains and says, that about the first of January, in the year one thousand eight hundred and forty; the said deceased being on a visit at the house of complainant, in the said county of Marshall, and complainant being in want of four thousand dollars, to enable him to relieve the title to certain lands in said county of Marshall, which he had before that time sold to one James M. Boyd, he, complainant, applied to the said deceased for, and obtained a loan of, the sum of four thousand dollars; that a few days afterwards, and before deceased had left complainant's, he let complainant have the further sum of three thousand three hundred and fifty dollars, which, by an agreement verbally made between complainant and deceased, was by complainant to be laid out in the purchase of lands, if a favorable opportunity offered, for the benefit of the deceased and himself; and thereupon he executed his note to the deceased for the sum of seven thousand three hundred and fifty dollars, embracing both the said sums of money borrowed and received, as aforesaid. Said note was made, as complainant now remembers, about the twentieth day of January, in

	Original.	Print.
Depositions of sundry witnesses - - - - - -	115	54
Proceedings in clerk's office by agreement of counsel, in regard to matters referred to master - - - - - - -	210	92
Report of master - - - - - - - - -	227	98
Exceptions to master's report - - - - - - -	232	100
Petition for a rehearing - - - - - - - -	236	101
" refused - - - - - - - - -	241	103
Final decree - - - - - - - - -	241	103
Appeal prayed and granted - - - - - - -	243	104
Appeal bond - - - - - - - - -	245	104
Clerk's certificate - - - - - - - -	247	105

UNITED STATES OF AMERICA,
Middle district of Alabama.

At a district court of the United States, for the middle district of Alabama, begun and held at Montgomery, on the first Monday after the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-eight.

The honorable William Crawford, judge of said court, not being present, the marshal adjourned the court until to-morrow morning, ten o'clock.

TUESDAY, *December 5th*, 1848.

The honorable William Crawford, judge of said court, not being present, the marshal adjourned the court until to-morrow morning, ten o'clock.

WEDNESDAY MORNING, *Dec. 6th*, 1848.

Present, the honorable William Crawford, judge of said court.

Bill in chancery.

District court of the United States, for the middle district of Alabama.

Paragraph 1. To the judge of the district court of the United States, for the middle district of Alabama, Daniel McNeill, a citizen of the county of Marshall, in the State of Mississippi, brings this his bill against Malcom Smith and Daniel Crawford, citizens of the State of Alabama, residing, the said Smith in the county of Autauga, and the said Crawford in the county of Coosa, executors of the last will and testament of John McNeill, deceased, late a resident and citizen of the said county of Coosa.

And thereupon your orator complains and says, that about the first of January, in the year one thousand eight hundred and forty; the said deceased being on a visit at the house of complainant, in the said county of Marshall, and complainant being in want of four thousand dollars, to enable him to relieve the title to certain lands in said county of Marshall, which he had before that time sold to one James M. Boyd, he, complainant, applied to the said deceased for, and obtained a loan of, the sum of four thousand dollars; that a few days afterwards, and before deceased had left complainant's, he let complainant have the further sum of three thousand three hundred and fifty dollars, which, by an agreement verbally made between complainant and deceased, was by complainant to be laid out in the purchase of lands, if a favorable opportunity offered, for the benefit of the deceased and himself; and thereupon he executed his note to the deceased for the sum of seven thousand three hundred and fifty dollars, embracing both the said sums of money borrowed and received, as aforesaid. Said note was made, as complainant now remembers, about the twentieth day of January, in

the year aforesaid, and due one day after date, and at the same time he delivered to the deceased fourteen negro slaves, which the said deceased took with him to Alabama, to be held as security for the money so received as aforesaid.

II. Orator further complaining says, during the next summer, and before the month of August, the deceased wrote to him, informing him of the failure of one Leeper, with whom the said deceased was then connected some way in business, and that said failure would embarrass the deceased in his money matters, and requested complainant to remit to him the three thousand three hundred and fifty dollars, if the same had not been used. Complainant answered said deceased's letter, advising him that the money had been used, but that his, complainants' prospects for raising money were flattering, and that he hoped to be able to relieve him before long; that if in the mean time his necessities become pressing, he authorized him to raise the money by the sale of some of the slaves in his, deceased's possession. He also informed deceased that for his greater security he had confessed a judgment for about that amount he had received, in favor of the deceased in the district court of Marshall county, in the State of Mississippi, which said judgment still remains open and unsatisfied on the records of said court; that afterwards, under date of the 17th of October, 1840, the said deceased wrote to Jas. L. Totten, esq., the attorney at law who had taken said judgment, in which among other things he says, "I learn that you have taken a judgment against my friend Daniel McNeill; it is a just debt and loaned money; I wish you to retain the judgment as a lien on the property, but not to sell any property until further orders, &c.;" which said letter is in complainant's possession, and will be produced on the argument, if required.

III. Orator further complaining states, that the said deceased still insisting on the return of the three thousand three hundred and fifty dollars, and owing to the embarrassments of the times, and the failure of sundry persons for whom he was security, and his own liabilities becoming much greater than he had apprehended, and being therefore unable to raise the money for the deceased, he sent to him an additional number of negro slaves, deemed amply sufficient in any event to secure the whole amount which he had received, and at the same time he executed and sent to said deceased a bill of sale of all the negroes thus sent and by the deceased before received, that the said deceased might be the better enabled to protect himself by a sale of a portion of the said slaves, if his necessities actually required him to raise money to save his own property. The said bill of sale is dated about the 23d day of February, 1841, and embraces the following named slaves, as well as complainant can now remember the same, to wit: 1. Rial, at the date of the bill of sale about thirty-two years old. 2. Harriett, about twenty-five. 3. Jim, about thirty-eight. 4. Becky, about twelve. 5. Betty, about thirty-four. 6. Fanny, about seventeen. 7. Bill Johnson, about twenty-one. 8. Frances, about twelve. 9. Bill, about ten. 10. Loracy, about twenty-seven. 11. Mose, about eight.

12. Squire, about three. 13. Rose, about thirty-four. 14. Essex, about twelve. 15. Anthony, about ten, (this boy, though embraced in the bill of sale, was not in fact sent to said deceased.) 16. Harriet, about seven. 17. Demetry, about four. 18. Rose's infant child, since named Sandy. 19. Stokes about twenty-two. 20. Peter Holland, about forty. 21. Nancy Holland, about thirty-five. 22. Milly, about eight. 23. Ellen, about twelve. 24. Polly Rebecca, about ten, named in the bill of sale Becky; that, since the deceased received said slaves, Fanny and Rose have each a child. Fanny's named Tennessee, and Rose's name not recollected; that with the said slaves the said deceased received four mules, and two horses, and two wagons, worth about eight hundred dollars.

IV. Orator further complaining says, that afterwards, in the year one thousand eight hundred and forty-two, in accordance with the original agreement he purchased of one Paul C. Read, of Marshall county, Mississippi, a tract of land embracing about four hundred acres, with a small lot of stock, and about twenty acres of corn, then growing on the said land, for the price of three thousand five hundred dollars, all of which was paid for by complainant as follows, to wit: The said Read received the following negroes, embraced in the said bill of sale, that is to say, Rial, Harriet, Jim, and Becky, and the balance, being about four hundred dollars, was paid in money. But the said deceased being unwilling to carry out the said agreement, and complainant not being able to return the said three thousand three hundred and fifty dollars, the said deceased claimed the sole benefit of the said purchase, and required that the deed from Read should be made to himself alone, which was accordingly done by said Read, as will fully appear from a record of said deed, made in the office of the clerk of the probate court of said county of Marshall, the original deed being, as complainant believes, in the possession of the said executors, or one of them; that, soon after this purchase, the said deceased under date of the 19th of August, 1842, wrote to his attorney, the said Totten, and among other things said, "I have bought out Read, his land, crop, stock, &c., &c., should there be any interference with it, you will commence suit immediately for the slightest violations of my rights;" this purchase thus made was taken by the deceased as so much in payment in part of the sum of seven thousand three hundred and fifty dollars received by complainant from the deceased as aforesaid.

V. Orator further complaining saith, that the said deceased was to allow to him a reasonable hire for the said negroes on a settlement, to be credited upon the note which he held on him for the seven thousand three hundred and fifty dollars, and complainant states that the average yearly hire of the said slaves has been worth at least twelve hundred dollars, and complainant believes that for most of the time they have been worth fifteen hundred dollars a year.

VI. Orator further complaining saith, that in 1842, as he now recollects, he paid to said deceased, at his own house, four hundred dollars, which was on settlement to be allowed as a credit to complainant.

VII. Orator further complaining saith, that the said deceased departed this life in the county of Coosa, in this State, about the month of December, 1843, after, as complainant hath been informed, he had made and published his last will and testament, by which the said Smith and Crawford were appointed executors; which said will hath been admitted to probate, as complainant is advised, and the said Smith and Crawford have taken upon themselves the duties of executing said last will and testament; that since their qualification as executors, they have taken possession of the said negroes, except those received by Read as aforesaid, and refuse to deliver them to complainant and receive the balance, if any, due from him to their testator on the loan aforesaid, or to account to him for the reasonable hire of said negroes, and claim to hold them absolutely as a part of the estate of their testator under the said bill of sale; whereas complainant states, and has so informed the said executors, that said slaves were received, not under a sale absolute, but merely as security in the nature of a mortgage, to secure the payment of the money received by complainant of deceased as aforesaid; and complainant here distinctly states, that said deceased, during all the time he had said slaves, and up to the time of his death, never pretended that said slaves belonged to him, but that they were the property of complainant, and that he had received them and held them merely as security as aforesaid, and not otherwise; and complainant verily believes, that all these matters are well known to the said executors, and though often requested, the said executors have refused to come to a fair and just account and settlement in relation to the premises; and upon such settlement and account, if any thing shall appear to be due by complainant to said estate, he here avers his readiness and willingness to pay and satisfy the same; all which actings and doings of the said executors are contrary to equity and good conscience, and tend to the manifest prejudice of complainant in the premises. To the end, therefore, that the said defendants may, if they can, show why complainant should not have the relief here prayed, and may upon their several and respective corporeal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct, and perfect answer make to each of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer, that is to say:

No. I. Whether or not several matters stated and set forth in the first paragraph of this bill be not true as therein stated and set forth; if they be not all true, then state fully what parts are true, and what, in particular, are not true. State fully all you may know about the said several matters.

No. II State fully all you may know of the several matters set forth in the second paragraph of this bill. If the several matters be not true, then state how the truth is in relation to those matters, if you know.

No. III. Answer particularly, as far as you can, if the several matters stated in the third paragraph of this bill be not true; if not true,

then state how the truth is in relation to the said several statements; set forth fully all you may know in the premises.

No. IV. State all you know of the several statements made in the fourth paragraph of this bill; are not all the matters set forth herein true? If not true, then state all you know about the premises.

No. V. State if the several matters as charged in the fifth paragraph be not true; if not true as therein stated, then set forth fully all you may know in relation to these particular charges.

No. VI. State whether or no, complainant did not in 1842, or when pay deceased the sum of four hundred dollars as stated in the sixth paragraph of this bill.

No. VII. Did not deceased die about the time stated in the seventh paragraph? And are not all the other statements made in this paragraph true substantially? If not, then state what the truth is in relation to all the several matters herein set forth.

And complainant prays that the usual process of subpœna may issue, directed to the said Malcom Smith and the said Daniel Crawford, executors, &c., as aforesaid, as defendants to this bill of complaint; and that they be required to answer the several interrogatories herein numbered respectively 1, 2, 3, 4, 5, 6 and 7.

And the premises and matters of equity herein stated and set forth being considered, complainant prays that it may be decreed that the said defendants have no other rights to the said several slaves and their increase, except that of mortgagee as the executors of said deceased, and that complainants hath a right to redeem the same upon the payment of such sum as may, on a proper account to be taken, be found to be due to said estate of said deceased on account of the said sum of seven thousand three hundred and fifty dollars.

And complainant further prays that said defendants be decreed to come to a full and fair account in relation to the several matters stated in this bill; and upon the payment of such sum, if any, as may be found to [be] due as aforesaid, after all proper allowances for payments, reasonable hire of servants, &c., that then the defendants be decreed to deliver the said slaves, and all their increase, to complainant within such reasonable time as the court may direct. And complainant prays for such other or further relief in the premises as may be meet and proper; and complainant, as in duty bound, will ever pray, &c.

Note.—Each defendant is required to answer the interrogatories numbered respectively, No. I, No. II, No. III, No. IV, No. V, No. VI, No. VII.

Tuscaloosa, *May 20th*, 1845.

PECK & CLARK,
Solicitors and of counsel for the complainant.

Filed 21st May, 1845, and subpœnas issued same day.
Teste, A. G. GOOCH, *Clerk.*

UNITED STATES OF AMERICA,

District court of the United States,
For the middle district of Alabama.

IN CHANCERY—*Subpœna.*

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded to summon Malcom Smith and Daniel Crawford, executors of the last will and testament of John McNeill, deceased, defendants, who are citizens of the State of Alabama, personally to be and appear at rules to be holden in the clerk's office of said court, at Tuscaloosa, on the first Monday of July next, then and there to answer a bill in chancery preferred against them, the said defendants, in said district court by Daniel McNeill, complainant, who is a citizen of the State of Mississippi; and this they shall in no wise omit, under the penalty prescribed by law and the rules of said court. Herein fail not, and have you then and there this writ.

Witness the honorable Wm. Crawford, judge of said district court, this first Monday after the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-five.

Issued the twenty-first day of May, in the year of our Lord one thousand eight hundred and forty-five.

Attest: A. G. GOOCH,
Clerk D. C., middle district, Ala.

Memoranda. The defendants are to enter their appearance in this suit in the clerk's office, on or before the day at which this writ is returnable; otherwise the bill may be taken pro confesso.

Attest: A. G. GOOCH, *Clerk.*

Marshal's return.

Received 21st May, 1845. Executed on Malcom Smith and Daniel Crawford, executors, &c., 5th June, 1845.

WM. ARMISTEAD, *U. S. Marshal,*
By H. WILKINS, *D. M.*

Clerk's office of the district court of the United States, for the middle district of Alabama.

Order at rules.

DANIEL MCNEILL, complainant,
versus
MALCOM SMITH and DANIEL CRAWFORD, executors of John McNeill, dec'd, def'ts. } In chancery.

On this twenty-first day of May, anno domini 1845, said complainant, by Messrs. Peck & Clark, his solicitors, filed in this office his original bill against said defendants, praying, among other things, that process of subpœna be issued, according to the rules of this court, requiring said defendants to appear and answer said complainant's bill, &c. Whereupon, a writ of subpœna for said defendants was issued on

said 21st May, 1845, returnable at rules to be holden in said clerk's office on the first Monday of July next.

Attest: A. G. GOOCH, *Clerk*.

And afterwards, on the ninth day of June, 1845, said writ of subpœna was returned by the marshal, endorsed by him as follows, to wit:

"Received 21st May, 1845. Executed on Malcom Smith and Daniel Crawford, executors, &c., 5th June, 1845."

WM. ARMISTED, *U. S. Marshal*,
By H. WILKINS, *D. M.*

Attest: A. G. GOOCH, *Clerk*.

UNITED STATES OF AMERICA,

District court of the United States,
For the middle district of Alabama.

At rules held in the clerk's office of the court aforesaid, before the clerk thereof, on the first Monday of September, in the year of our Lord one thousand eight hundred and forty-five.

DANIEL MCNEILL, complainant,
versus
MALCOM SMITH and DANIEL CRAWFORD,
executors of John McNeill, dec'd, def'ts. } 9. In chancery.

This day came the complainant, by Peck & Clark, his solicitors, and it appearing to the satisfaction of the clerk that a subpœna in chancery was issued, at the instance of the above named complainant, on the twenty-first day of May, anno domini 1845, requiring the above named defendants, executors of the last will and testament of John McNeill, deceased, to be and appear at rules to be holden in this office, at Tuscaloosa, on the first Monday in July then next, then and there to answer a bill in chancery preferred against them in this court; and that by a memorandum on said subpœna, entered according to the XIIth rule of the practice of said court, the said defendants were informed that they were required to enter their appearance in this suit in the clerk's office, on or before the day at which said writ was returnable; otherwise the bill might be taken as confessed.

And it further appearing, to the satisfaction of the clerk, that said subpœna was duly executed on both of said defendants, on the fifth day of June, anno domini 1845, and returned to this office on the ninth day of said month of June.

And it further appearing to the clerk that the said defendants have failed to cause their appearance to be entered according to law and the practice of said court, and that they have also wholly failed to plead, demur, or answer the said complainant's said bill of complaint, on motion of said complainant by his said solicitor, it is therefore ordered, that the complainant's said bill of complaint be taken as confessed against the said defendants.

Attest: A. G. GOOCH, *Clerk*.

Affidavit of respondents.

DANIEL MCNEILL, complainant,
versus
MALCOM SMITH and DANIEL CRAWFORD, executors of John McNeill, dec'd, def'ts. } In chancery.

U. S. district court, Tuscaloosa.

Came before E. Pond, judge of the county court of Coosa county, Alabama, Malcom Smith and Daniel Crawford, executors of John McNeill, who make oath that on or about the 1st of June they were served with a subpœna in this cause; that defendant, Smith, lives in the county of Autauga, Alabama, and defendant, Crawford, in Coosa county, about fifty miles from the residence of said Smith; that at the date of said service said Smith had just returned from the State of Arkansas in very bad health—it was some time before he was able to get out to do business—but some time after he and his co-defendant applied to W. W. Morris, their attorney, for advice as to the course to be taken, and was informed, by said Morris, that a copy of the bill must be procured from Tuscaloosa before any thing could be done, which was immediately sent for. They admit that said copy was received in time to have filed the answer before the ensuing term of court, and they think in time to have answered at the last rule day before court, and should certainly have complied, had not the said W. W. Morris, their attorney, said to them, that if the answer was filed by the first term of court thereafter, that it would answer. This conversation took place between said Smith and Crawford and said attorney, say in the latter part of the summer before the court in December, 1845, said Smith being on his way to the Sulphur Springs, in Talladega county, in very low health, and in bad condition to answer said bill, or undergo any mental exertion. Said Crawford, desiring to answer jointly with Smith, postponed his answer, as he was informed he could do without detriment; said Morris saying that he supposed the practice in the United States court here the same as that in the State chancery court; but in any event he (Morris) would write to Messrs. Peck & Clark, complainant's counsel, with whom he was on good terms, and apprise them of the delay. Said Morris informs defendants that he did write said letter, and has been informed by Judge Peck that he received said letter. Said Morris informs affiants that he did not ascertain that the practice of the U. S. court required a different course in regard to the filing of answers, until the last term of this court, at which time the answer was at or before the second day of the term. Affiants therefore pray that said judgment pro confesso be set aside, which has been taken in this cause, and that complainants' answer be permitted to stand regularly on file in this cause, or affiants will be taken by surprise and be greatly injured, when in truth and in fact a different course will not in any degree, as they conceive, work any injury to complainant. Affiants are further informed, that at the last term of the court, (the judge being absent by reason of sickness,) affiants' counsel

proposed to the defendant and his counsel to speed the cause by their allowing the judgment pro confesso to be set aside by consent, and let the cause stand at issue for the taking of testimony; to which proposition defendant refused to accede *to*, and thus the cause stands. That under all the circumstances defendants appeal to the exercise of the discretion of the court in their behalf in this matter, as great injustice would be done if said judgment were permitted to stand.

MALCOM SMITH,
DANL. CRAWFORD.

Sworn to and subscribed upon the 16th day of ————, 1846.
E. POND, *J. C. C. C. C. C.*

Filed 25th May, 1846.

A. G. GOOCH, *Clerk.*

Affidavit of W. W. Morris.

STATE OF ALABAMA.

DANIEL MCNEILL
vs.
MALCOLM SMITH [and] Daniel Crawford, ex'rs of John McNeill.

District, U. S., court, May term, 1846—In chancery.

W. W. Morris, solicitor for defendants, makes oath that the defendants did apply to him at the time and under the circumstances shown in their affidavit on file in this court; that he did advise them as therein shown; that he did then labor under the impression that the practice in this court was conformable to the practice in the State chancery court; that he then had not the rules of said court, nor never had seen them; that under the supposition that said rules might might possibly vary from the State practice, affiant did, on or about the date of the service of the subpœna on defendants, write to Messrs. Peck & Clark, solicitors for complainant; the contents of said letter he cannot now particularly state, but to the best of his recollection it in substance stated that an appearance might be considered at the time prayed, and that answer would be in at the ensuing term—affiant then living (say) one hundred and ten miles from this place; affiant received no answer to this letter, and rested easy that all was right until the 2d day of last term of this court, (having been prevented from getting in on 1st day by reason of accidents on the road,) when he learned that a judgment pro confesso had been taken in said cause, and soon after was also informed that it would be insisted on; affiant further says that what is said in Smith & Crawford's affidavit, in relation to facts detailed to them by him, is substantially correct, according to the best recollection of this affiant.

That defendants will be taken by surprise, and affiant thinks will be greatly injured if said judgment be permitted to stand; that the answer of defendants was deposited in the register's office on the 2d day of last

term, and that there has been no disposition or intention on the part of defendants to delay this cause.

W. W. MORRIS.

The foregoing affidavit sworn to, and signature acknowleged before me this 25th day of May, 1846.

A. G. GOOCH,
Clerk D. C. Mid. Dis. of Ala.

Filed 25th May, 1846.

A. G. GOOCH, *Clerk.*

Notice to complainant's attorneys by respondents.

DANIEL MCNEILL
vs.
MALCOM SMITH, Daniel Crawford, exrs. of John McNeill. } In chancery.

U. S. district court at Tuscaloosa.

Messrs. Peck & Clark, solicitors for complainant, are notified that affidavits are on file in this court, in support of a motion which will be made at this term of the court to set aside the judgment pro confesso heretofore taken in this cause.

MALCOM SMITH,
DANL. CRAWFORD,
Executors, &c.

May 25th, 1846.

Received 25th May, 1846. Executed same day.

J. G. LYON, *U. S. M.*
By F. H. LYON, *D. M.*

Filed 25th May, 1846.

A. G. GOOCH, *Clerk.*

At rules.

Clerk's office of the district court of the United States, for the middle district of Alabama.

DANIEL MCNEILL, complainant,
vs.
MALCOM SMITH and Dan'l Crawford, exrs. of John McNeill, defendants.

On this third day of December, anno domini eighteen hundred and forty-five, came said defendants, by William O. Morris, esq., their solicitor, and entered an appearance for said defendants in this cause, and file said defendants' answer to complainant's bill.

A. G. GOOCH, *Clerk.*

Answer of respondents.

DANIEL MCNEILL,
vs.
MALCOM SMITH, Dan'l Crawford, exrs. of John McNeill, deceased. } In chancery.

United States district court, Tuscaloosa, Alabama.

The joint and several answer of Malcom Smith and Daniel Crawford, as the executors of John McNeill, deceased, to complainant's bill of complaint in the above entitled cause. Defendants reserving all exceptions to complainant's bill of complaint, answering say:

Paragraph I. They know nothing of the loan of money to complainant by their testator, as alleged; they admit testator's visit to complainant's residence, as alleged; they know nothing of testator's advance (a few days after the loan) of the further sum of three thousand three hundred and fifty dollars, under a verbal agreement, made between complainant and testator, that complainant was to lay out said money in the purchase of land, if a favorable opportunity offered, for the benefit of both complainant and testator. They admit the execution of a note by complainant to testator for the sum of seven thousand three hundred and fifty dollars, a copy of which is annexed, exhibit A, and the original made a part of this answer; as to whether the consideration of said note embraced two transactions defendants know not; nor do they know what constituted the consideration of said note further than [the] face of said note, which declares the consideration borrowed money, nor anything of the delivery of fourteen slaves at the time to testator by complainant, to be held as indemnity for money then received. They admit that on the return of testator from his visit to Mississippi, as alleged, he brought slaves with him; the number, names, or description of said negroes defendants do not know. They admit, to their best information and belief, that the larger portion of negroes testator brought with him as aforesaid came from the possession of complainant.

II. Defendants know nothing of testator's writing to complainant as alleged, nor of the contents of said letter; they admit the failure of Leeper, and the consequent embarrassment of testator. They know nothing of complainant's requesting or authorizing testator to raise money for account of complainant by a sale of some of the slaves named in complainant's bill, unless such conclusion can be drawn from the letters of complainant under dates of 24th August, 13th October, 1840, and the 12th and 23d of February, 1841; these letters contain all the information in the possession of defendants as to authority given by complainant to testator relating to the sale or disposition of any property which complainant may have laid claim to; therefore they deny said request or authority as charged. Defendants admit the confession of judgment by complainant in favor of testator in the circuit court of

Marshall county, Mississippi, for the sum of seven thousand dollars, previous to October, 1840; and that said judgment remains unsatisfied. They do not admit that the confession of said judgment was intended by complainant for the better security of testator; all the information or knowledge they have touching the object and motive which prompted the confession of said judgment, is derived from complainant's letter to testator under date of 24th of August, 1840, herein before named; a copy of which, together with those of 13th of October, 1840, 12th, 23d of February, 1841, are hereunto annexed, exhibits B C D, the originals of which will be produced on the hearing, and such portions thereof as may be material to the issues on behalf of defendants in this cause, defendants pray may be taken as a part of this answer. They know nothing of the letter from testator to James L. Totten as charged, except that defendant Smith says, that he has heard said Totten speak of the reception of a letter from testator of like import as the one alleged.

III. Defendants know nothing of testator's insisting on the return of the thirty-three hundred and fifty dollars as alleged, nor of negroes coming from complainant into the possession of testator at two different times, though they do not deny that such may have been the fact. They admit the execution of a bill of sale by complainant to testator on the 23d of February, 1841, for the negroes therein named, which bill of sale is made a part of this answer, and a copy hereunto annexed, exhibit E. Defendants do not know that said bill of sale was intended as a protection to testator as alleged, nor have they been so informed, further than may be gathered from the exhibits above named; they insist that complainants be held to proof of the same.

Defendants do not know whether testator received four mules, two horses, and two wagons, as alleged. They admit that after the date alleged, they saw on the premises of testator a wagon and four mules, which they suppose came with the negroes; there was also on said premises a Jersey wagon, which may have come with said negroes; of this, however, defendants do not know. Defendant Crawford says, that at the late residence of testator, on the day of the appraisement of the personal property of which he died possessed, in a conversation with complainant, (he, complainant,) stated or distinctly conveyed the idea of a mutual gift or exchange, (to wit,) testator had let him have a carriage, or carriage and horses, and complainant had, in return, let testator have a wagon and mules. And moreover, both defendants say, that on said day complainant made out a list of the property which he claimed from said estate, in his own handwriting, at the request of defendant, that they might know which property he claimed, which embraced the following property, to wit, slaves Fanny and her child Tennessee, Stokes, Rose and her two children Demetre and Sandy, Essex, Bill Johnson, Bill Mississippi, Moses, Washington, Ellen, Polly, Peter, Nancy, and Milley. No claim whatever was set up by complainant to any other property except that last above named. And defendants further say, that said list of property is now on file in the orphan's court

of Coosa county, in the State of Alabama, as a portion of the schedule of property belonging to testator's estate, returned to said court by the appraisers acting under its authority, which defendants crave leave to refer to as of record in said court, a transcript of which will be used, if necessary, as evidence on the final hearing. Defendants say that there were some horses said to have come from complainant's possession, but they were all taken away by him, as well as defendants recollect, previous to testator's death. So said defendants, on their best knowledge, information, and belief, deny the claim alleged by complainant to the two horses, four mules, and wagon; as to the Jersey wagon they know nothing touching complainant's right. As to whether the property above named was worth eight hundred dollars, defendants cannot say, because from their slight knowledge of the horses spoken of, they are unable to fix their value or to identify them with certainty. The larger wagon they would say was worth eighty dollars, the four mules two hundred and forty dollars, and the Jersey wagon, say about five dollars; the above defendants consider the full value of the property named.

IV. Defendants know nothing of the alleged purchase of the tract of land of Paul C. Read, nor of the price agreed on or paid for said land, further than information in said and nor the consideration given. Defendant Crawford says that slaves Harriet, Rial, Jim, and Becky, were in testator's possession in the year 1842, and both defendants admit that said negroes were subsequently disposed of by testator, but in what manner or for what purpose they do not know. They know nothing of the payment of four hundred dollars, in part, for the Read land, nor of complainant's inability to return the alleged thirty-three hundred and fifty dollars, except what they learn from complainant's letters, herewith exhibited. They know nothing of testator's unwillingness to carry out the alleged agreement, nor of testator's claiming the sole benefit of the Read purchase. They admit the deed from Read, conveying said land, was taken solely to testator, and is now in defendant's possession. They know nothing of the alleged letter of testator to J. L. Totten. They know nothing of the Paul C. Read land being taken by testator in part payment of the seven thousand three hundred and fifty dollar claim due from complainant to testator as alleged.

V. Defendants know nothing of any agreement between complainant and testator for a reasonable hire for said slaves on settlement as alleged. They deny that the average annual hire of said slaves has been worth twelve hundred dollars; but, on the contrary, insist that the yearly hire of the slaves claimed by complainant as above to be not worth more than (i. e. in the list,) three hundred dollars; and that the yearly hire of those claimed in complainant's bill to be not more than three hundred and fifty dollars, or four hundred and fifty, if Laura and Frances be included.

VI. Defendants know nothing of the alleged payment to testator, at his own house, in the year 1842, by complainant, of four hundred dollars, unless an entry in a memorandum book in the handwriting of

testator, of which he died possessed, refers to said payment, which is in the following words and figures, to wit: Daniel McNeill paid $400 in June; "borrowed in April, [18]40 and 1841, 220 Vicksburg money;" so, said defendants insist, if said memorandum refers to said four hundred dollars, that complainant is not entitled to said claim, as he alleges, and that he be held to proof of the said allegation in any event.

VII. Defendants admit the death of testator, his will, and their executorship as alleged. They deny the possession of any slaves in virtue of said office, claimed by complainant, except those above set forth, a list of whom was furnished by complainant. They admit their refusal to deliver to said complainant, said negroes, or to account for their hire. They also admit that complainant informed them that said negroes were held as security for the payment of the money alleged. They deny that testator never pretended that said slaves belonged to him during the period of his possession up to the time of his death, or that he had received them merely as security as aforesaid, and not otherwise. But, on the contrary, they insist and allege that all of the acts and declarations of testator in relation to and touching the ownership and control of said slaves, while in his possession as aforesaid, so far as came to defendants' knowledge, were such as would lead to the conclusion that they were held by testator in absolute right.

And defendant Smith says, that in a conversation with testator, while in the possession of said slaves, he (testator) claimed them as his own in absolute right, and spoke of them as such. Therefore, defendants deny that said bill of sale was intended as a mortgage to testator of said slaves, or that they were by him held as such. Defendants answering say, that negroes Laurice and Frances died in the year 1843; that negro Squire was never in testator's possession to the best of their knowledge and belief. They admit that since testator's possession of said slaves, that Rose and Fanny have each had a child; Fanny's named Tennessee, and Rose's named Sandy. Defendants further answering say, that about the time testator visited Mississippi as alleged, he had in cash about fourteen or sixteen thousand dollars; that they verily believe, and so allege, that he took with him said money on said visit, and from said testator's embarrassed condition, soon after his return in consequence of the Leeper failure, and his efforts to raise money, and his not bringing property with him from Mississippi, that they know of, to represent said fund, within defendant's knowledge or information, they are induced to believe that a much larger amount of money went into complainant's hands than he admits in his bill. In confirmation of this view, defendants refer to the letters of complainant heretofore made exhibits to this answer, in which he speaks of negroes and lands coming to testator and complainant, for a debt due complainant from Wm. Craft for five thousand one hundred dollars; also in exhibit B, he says, "we have also another execution now at maturity against all the Hollands for three thousand dollars:" again in exhibit C, "Horn. Thornton wants to buy back his land, but is only willing to pay $2,500, which I have refused to take." "I am now at

work on old Boyd, and let it not surprise you if my next shall inform you that we have got his land," &c., &c.; and also exhibit D, "our mill establishment here is doing well, and if I had time to give it my own attention, would make $5,000 per year." So defendants are led to believe, from complainant's said declarations that testator has, or should have, an interest to a large amount in property or effects, which is, or has been, under the control of complainant, which matters they pray may be taken into account on the final hearing. Defendants have omitted, but now answer, that complainant on said day of appraisement claimed a mare and colt, which he took into his possession and carried away by permission of defendants, being satisfied from the declarations of testator not long before his death, that said property did of right belong to complainant. Defendants further answering say, that in the early part of the year 1844, complainant admitted to defendant Crawford that he had in his possession a negro woman, the property of testator; the name of said negro defendants do not recollect; complainant also admitted that he had in his possession negro slave Mahala and child, and for that reason he set up on the day of appraisement aforesaid no claim to slave Betty.

Defendant Crawford says, that some time in the early part of the year 1844, he had a conversation with complainant in reference to the business transactions between complainant and testator, in which complainant admitted testator to be interested with him in certain lands, a list of which complainant then made out in his own handwriting, showing the number of acres, which is made a part of this answer and a copy annexed, exhibit F.

Defendants having, as they are advised, fully answered the allegations of complainant, pray that the matters herein set forth in defence of complainant's bill of complaint, may be taken into account on the final hearing, and that they be dismissed with their reasonable costs.

W. W. MORRIS,
Sol. for deft's.

Exhibit A.

$7,350.

One day after date I promise to pay John McNeill or bearer, seven thousand three hundred and fifty dollars, (borrowed money) value received, given under my hand and seal this 20th January, 1840.

DANL. McNEILL. [SEAL.]

Exhibit B.

HOLLY SPRINGS, MISSISSIPPI,
24th August, 1840.

MY ESTEEMED FRIEND: I finally come to the conclusion to write. This is a duty I have put off ever since I received yours, under the belief that I would see you before a letter would reach you, but innumerable have been the train of intervening obstacles; early in July my family

were taken sick, and have continued so ever since; all are well now but my little daughter. I am now ready to start, but have encountered a pecuniary disappointment that will compel my detention I know not how long. I have a debt due me on William Craft and others of this place for 5,100 00, which I did think to bring in to your relief; the more effectually to secure punctuality in the payment of it, it was secured by a trust deed on 6 negroes and 800 acres of well improved land, but the money will not be paid in time to meet your demand, and I have resorted to a foreclosure of the deed of trust. I will have it closed in 30 or 40 days; I have to watch him to keep him from running off the negroes; we will get all the negroes and the land; I would prefer the money, but there is no person able to bid the amount of our debt, and as it is all he has I will bid it up to a fair price; we have also an execution now at maturity against all of the Hollands, for $3,000; but under the laws of this State it can't be collected before Janunry next; I had it levied on negro property, and will [have] either the money or negroes; it will be unsafe to make much calculation on my raising much money by the time spoken of in yours; but if no convenient way occurs to you of raising the amount, you had better carry up the case by some process till I can bring my arrangements here to bear in your relief; in the mean time I want you to understand that if the money is to be raised by a sacrifice of property, I am the man who ought to make it, and it is impossible for me in Mississippi to sell anything for money; you are, therefore, fully authorized to dispose of [it] in any manner you think proper any property you have of mine for your benefit, in doing which it will only be justice to yourself, and the only course I can pursue that your kindness to us may not turn out to your own injury. I will here remark to you that a short time previous to last court, I became alarmed on account of some heavy liability I was under for our friend Gen'l Davis and others, and to avoid a sacrifice of my property in case of failure I confessed a judgment to you, or in your favor, for $7,000, (seven thousand.) I am now satisfied I shall not suffer any loss, but as the judgment stands it will be necessary for you to write (enclosed to me,) to James L. Totten, (your attorney,) to retain the judgment lien on the property, but not to sell till further orders from you; this looks strange to you, but I thought it necessary as well for your security as my own protection. I am fearful you think hard of me for not visiting you ere this; but my dear friend, if you knew with what sleepless vigilance I have had to watch and combat the swindling artifices of men about here, you would see at once that the least relaxation of vigorous energy, or ten days absence, would have effectually ruined me; I shall soon have brought all my business in this county to a close; the storm will then have passed over, and in domestic quietude will I retire, and near you unhesitatingly will I permanently settle. * * * *

Signed, D. McNEILL.

Exhibit C.

AT HOME, ONE MILE OF HOLLY SPRINGS,
Oct. 13th, 1840.

DEAR COUSIN: I had the pleasure of receiving yours of the 17th August, but one or two days after I had written you last, and as mine of that date conveyed intelligence of all matters which I could say in reply to yours now before me, my answer has been postponed till the present, that I might give you some idea the then "coming events would cast their shadows." In my last I gave you a correct account of my pecuniary inability to relieve you at an early day from your thraldom with Mr. Leeper, but advised the procrastination of the debt till I could bring my means to bear in your relief; but in any event, authorized and requested you to throw my means at your command in the breach of your own individual sacrifice; this course I am prompted to advise by the same feelings and motives which actuated you to assist me, for which you hold over me the highest obligations I owe upon earth; and here I will again assure you that such are the views I entertain of your feelings of kindness toward me and my family, that it will be impossible for you to pursue a course that will not meet my approbation; if practicable, however, to obtain farther time on Leeper's debts, I will be able, I think, to save a sacrifice from us both. In my last I spoke of a trust deed we held over William Craft of this place for $5,100 00; this deed will mature by the 1st February for the whole amount; I do not think there is that much money in the country, but we will get 5 negroes and 800 acres land near here, with valuable improvements, for which he paid $6,000. The Judgment vs. the Hollands is not yet levied, it is for about $3,000; I shall endeavor to have it levied on negro property in 2 or 3 weeks. Ham. Thornton wants to buy back his land, but is only willing to pay $2,500, which I have refused to take. The above is a brief view of the old matters; I will now tell you what I am looking to for the future. I am now at work on old Boyd, and let it not surprise you if my next shall inform you that we have got his land. The marshal of the State was with us last night; he has an execution vs. Boyd for $5,000, which he will levy on all 3 of his sections; the plaintiff demands gold and silver; I hardly think he (Mr. Boyd,) can get it, as him and Cheers have fallen out; and if he fails to get the silver by sale day, this is the arrangement between me and the marshal, we are to have the land bid off by a friend for our joint account and benefit, and he is to wait with me for my half of the money till court, by which time I can get it; if I can carry this out, it will be a grand speculation. I presume it is unnecessary here to apologize for not having visited you ere this time, for I am sure, could I have been under the influence of your immediate counsel, you would have advised, and will approve, the course I have and am pursuing; with this solemn assurance and pledge of my honor, that so soon as I conceive I can possibly leave, I will be there.

* * * * * *

Signed, D. McNEILL.

Exhibit E.

Know all men by these presents, that I, D. McNeill, for and in consideration of the sum of twelve thousand dollars, to me by John McNeill in hand paid, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents doth bargain and sell, unto the said John McNeill, the following negro slaves for life, to wit: Rial, Harriett, Jim, Becky, Read, Billy, Fanny, Bill, Frances, (little Bill,) Loracy, Mose, Squire, Rose, Essex, Anthony, (Harriett Read,) Demetre, and Rose's infant child, Stokes, Peter Holland, Nancy Holland, Milly, Ellen, Becky; to have and to hold the above negroes, free from the claim of all persons whatever; also warrant the negroes to be sound, and the title good.

Given under my hand and seal, this 23d February, 1841.

(Signed) D. McNEILL. [SEAL.]

D.

NEAR HOLLY SPRINGS,
February 12th, 1841.

MY ESTEEMED FRIEND: I have rented out this place, and shall start to-morrow to my mother's; my intention was before this to have been on my road to see you, but such has been the last month or two of incessant rain, that the roads are impassable. I am now occupying an hour between midnight and day, and many and often, my dear friend, are the recurrence of times like this with me, times when all human beings *and were* still, and solemn nature seem blessed with respose; and I am doomed in restless forebodings of the ills of the future to brood over and anticipate misfortunes, which I think have fallen to the lot of but few men besides myself. One remarkable fact is, that in my intercourse with the world, besides yourself, B. E. Bourland, and some few others, I have scarcely ever found a man who would not, and has not, taken advantage of my confidence. I have ever made a punctilious observance of honorable principles my unerring rule of action; but it has ever been my fate to fall a victim to my own benevolence. My dear sir, I assure you I am not less than $50,000 loser by the people of Mississippi, and am yet greatly behind. I have signed no note or paper as security since you left here, but recent developments of the situation of the people of this country show me now that I have to meet every dollar I ever made myself liable for; but I can meet it all this year. If I get off, I will start to see you as soon as the roads get so that I can travel; but I am wholly unable to pay you any money; if my life was at stake I could not raise it. I have started to your house 10 or 12 negroes; they are at John P. Cunningham's; the bills of sale are all in your name, but Jim, Stokes, Rose, and her children, and they are under mortgage to you of record here; they will be forwarded on as soon as the roads will permit; if, however, you find it convenient send for them; there is 12 others here, including our house servants, 5 of them at Craft's tavern, in

town, 2 women, 1 girl, and two children. I got them of Craft, and if he pays $2,000 by the 25th December, they are to be reconveyed.

I am writing under great depression of feelings, because I know you expect, and have a right to expect, me to pay you some money, and it is out of my power; and if you cast me off from all future business connexion, as you suggest in your last, you may do, if I shall fail in being able to pay $3 or $4,000; at the same time, that you will find me willing to admit the justice of your course. You will find me honorable and not ungrateful, and the recollection of your kindness to me and my little wife and children, mingling with the best feelings of frail human nature, shall cling around the altar of our family gratitude, and in the language of Byron, "form the greenest spot on memory's waste."

My best respects to you and yours, and believe, yours till death,

(Signed) D. McNEILL.

FEBRUARY 23d.

☞ The foregoing has been neglected to be mailed until Revils has got ready to start; as it may contain some apology for my many directions, and as I have much writing to do to-night, I forward it, presuming you have much leisure, and the tax on your patience may not seem irksome. I send you also a bill of sale for all the negroes; you will [do] with them as you may think best; it would be extremely impolitic and unwise I find for me at this time to leave here. I find there are several fellows here who hold over me demands as security for others, are postponing any process against those who owe the debts, thinking to lay them on me in Alabama, with a hope that by oppressing me there, that to relieve me you will make yourself liable; for me to be there, and be the subject of oppression, would be unpleasant to you.

I, therefore, have concluded to remain here, and bring all these matters to a close. I know I can do it this summer. Our old friend, General Davis, has given up. I shall lose by him. The whole country is a wreck. I think I am [as] well off as any of them; and the experience of the past has shown conclusively that there is none of them who possess over me any advantage in the way of financiering. Our mill establishment here is doing well, and, if I had time to give it my own attention, would make $5,000 per year. It sold here, a year ago, for about $7,000. I have offered it for $3,500, to get money to send you; but no man in this country has got the money. I have not seen any of the Bradfords yet, to get the number of Tipton B's land; as soon as I can, I will see it, and write you all particulars.

My wife • • • • • • • • • • • • • •

Exhibit F.

Memphis place - - - - - -	1,280
McNeill place - - - - - -	320
Willis place - - - - - -	560
Rind place - - - - - -	560

Plaer ½ sec.	320
My homestead	640
Saunder's place	160
Robertson place	160
Tancray (Taxes)	160
Old house place	320
Boyd	640
Mill place	320
	5,440

THE STATE OF ALABAMA, *Coosa county.*

Personally came before me, E. Pond, judge of the county court for said county, Malcom Smith and Daniel Crawford, who, upon their oaths, sayeth, that the matters and things set forth in the foregoing answer, as of their own knowledge, are true, and when stated from information derived from others, or belief, they believe to be true. Sworn to and subscribed before me this 17th of November, 1845.

MALCOM SMITH,
DANIEL CRAWFORD.

Sworn to and subscribed before me this 7th day of January, A. D. 1846.

E. POND, *J. C. C. C. C.*

Filed in clerk's office this third day of December, A. D. 1845.
Attest: A. G. GOOCH, *Clerk.*

Answer having been withdrawn, re-filed as amended 28th May, 1846.
A. G. GOOCH, *Clerk.*

DANIEL MCNEILL
versus
MALCOM SMITH and Daniel Crawford, executors of John McNeill. } In chancery.

The defendants will move the court to set aside the judgment pro confesso taken in this cause, and to file their answer to complainant's bill, notice having been given to complainant's solicitors of affidavits on file.

W. W. MORRIS, *Sol. for def'ts.*

Granted to Messrs. Peck & Clark, solicitors for complainant.

DANIEL MCNEILL
versus
MALCOM SMITH and Daniel Crawford, executors, &c. } In chancery.

This day came the parties, by their solicitors, and, on motion of defendants, it is ordered that the judgment pro confesso, taken in this cause, be set aside, and that they have leave to file a full and complete

answer to the bill of said complainant, and that the said complainant have leave to file exceptions thereto, at any time before the first Monday of August next.

IN CHANCERY.—*Replication of complainant.*

DANIEL MCNEILL, complainant,
versus
MALCOM SMITH and Daniel Crawford,
respondents.

District court of the United States, for the middle district of Alabama.

The replication of said complainant to the answer of the said respondents, executors of the last will and testament of John McNeill, deceased:

This repliant, saving all the usual exceptions, &c., for replication to said answer, saith, that he will aver and prove his said bill to be true, &c., and sufficient in law to be answered unto; and that the said answer of said respondents is uncertain, &c., and insufficient to be replied unto, &c.; without this, that there is any other matter, in said answer contained, material in law to be replied unto, and not herein replied unto, &c., is true, &c.; all which this repliant is, and will be, ready to aver and prove, as this honorable court shall award, &c.; and he humbly prays, as in his said bill he hath already prayed, &c.

PECK & CLARK,
Solicitors and of counsel for complainant, &c.

Filed 17th July, 1846.
Teste, A. G. GOOCH, *Clerk.*

Rules.

Answer having been withdrawn, was re-filed this 28th May, 1846, as amended. Replication filed, 17th July, 1846.
Teste. A. G. GOOCH,
Clerk.

DANIEL MCNEILL
vs.
MALCOM SMITH and Daniel Crawford. } In chancery.

On motion of the complainant by his solicitor, it is ordered that certain depositions taken in this cause be published.

DANIEL MCNEILL
vs.
MALCOM SMITH and Daniel Crawford.

It is ordered that this cause be continued.

DANIEL MCNEILL, complainant,
vs.
MALCOM SMITH and Daniel Crawford,
executors, &c., defendants. } In chancery.

This day, on the application of complainant by E. W. Peck, esq.,

his solicitor, and on his motion, it is ordered that this cause be set down for hearing at the next term of this court, on the bill, answer, exhibits, and testimony of the parties.

Teste. A. G. GOOCH, *Clerk.*

Affidavit of Daniel Crawford, for continuance.

DANIEL MCNEILL
vs.
DANIEL CRAWFORD, Malcom Smith, executors of J. McNeill. } In chancery.

District court, U. S., for middle district of Alabama.

Daniel Crawford, one of the above defendants, makes oath before me, E. Pond, judge of the county court of Coosa county, that he will not be ready for trial in this cause at next term; that W. W. Morris is his only solicitor in said cause; that he has managed said cause from its commencement; that it is a complicated suit of much importance to defendants; that said Morris informed him on yesterday, for the first time, that, owing to other professional engagements, he would be unable to attend the next term of said district court; that he cannot, as he believes, get a solicitor in lieu of said Morris, who would in so short a time be able to do said cause justice; that he does not believe he can come safely to trial in said cause at next term, without the services of said Morris, and he expects to have his services in said defence at the succeeding term; that this application is not made for delay; he therefore moves said court for a continuance of said cause.

DANIEL CRAWFORD.

Sworn to and subscribed before me, this 13th May, 1847.

E. POND,
Judge C. C. C. C.

Filed 24th May, 1847.

A. G. GOOCH, *Clerk.*

Affidavit of W. W. Morris.

DANIEL MCNEILL
vs.
DANIEL CRAWFORD, Malcom Smith, executors of John McNeill. } In chancery.

District court of the United States, for the middle district of the State of Alabama, at Tuscaloosa.

W. W. Morris moves the court for a continuance of this cause in behalf of the defendants. He states that he is aware of no other solicitor employed for said defendants in this cause except himself; that from his knowledge of the nature of said cause, thinks it would be difficult for another solicitor employed now to do justice to said cause on trial at next term of this court. That the circuit court of Randolph county comes on at the same time that the court above is appointed to be held,

also, the chancery court held for Tallapoosa; affiant states that he has professional business in both of said courts which demands his attention as counsel; that the cause in Tallapoosa particularly calls for his personal efforts, being a bill of injunction enjoining an action at law; the cause will not well admit of delay, it being greatly to the interest of his client to procure a dissolution of the injunction at said term in order that the suit at law may progress; there are also various and complicated interests sought to be settled by said bill, aside from the property sued for at law; affiant says he is, so far as he knows, the only solicitor engaged in said cause; in this view, his attention is demanded at said court, aside from motion to dissolve the injunction; that he cannot, consistent with his duty to his client, delegate the defence of said cause to another; that the said bill has been very recently filed, and that affiant has had no opportunity, nor will he, (in consequence of the chancellor's absence,) have such opportunity of getting a hearing in vacation for the dissolution of said injunction upon the sitting of said court; affiant believes that he can get through with his Randolph business and reach Tallapoosa in time to attend to said chancery cause; for further showing affiant says, that the chancery court at Wetumpka, in the county in which he resides, comes on on the 1st Monday after the fourth Monday in May inst.; that the distance from Tuscaloosa to Wetumpka is, say one hundred and ten miles; that unless said cause was disposed of on Thursday evening of the 1st week of said district court, he could not get to Wetumpka in time for his business in said chancery court, which will demand his personal attention as solicitor; affiant says that he is confident that the interest above set forth, which conflicts with his duties in the above court, are of more importance to the parties in interest, and will admit less of delay, than the above cause; that this application is not made for delay. W. W. MORRIS.

Sworn to and subscribed before me, this 13th May, A. D. 1847.

E. POND,
Judge C. C. C. C.

Filed 24th May, 1847.

A. G. GOOCH, *Clerk.*

DANIEL MCNEILL
vs.
MALCOM SMITH, and Daniel Crawford, ex'rs. } In chancery.

This day came the parties by their solicitors, and on motion of defendants, it is ordered that this cause be continued.

Notice, &c.

DANIEL MCNEILL
vs.
DANIEL CRAWFORD, MALCOM SMITH, ex'rs., &c.

In district court, U. S., at Tuscaloosa.

E. W. Peck, esq., solicitor of record of complainant, will take no-

tice, that when this cause is called for hearing the defendants will offer oral proof as to the signature of complainant to the exhibits referred to in defendants' answer to complainant's bill in this cause, to wit, letters of complainant to John McNeill, of date 24 August, 1840, 13 October, 1840, and 12th and 23d of February, 1841, exhibits C, B, D; also exhibit E, being a bill of sale of 23d of February, 1841, for certain slaves described in the answer; also exhibit F, being a list of certain lands, and a promissory note set forth in said answer, dated 20th January, 1840, due one day after date, drawn by complainant, payable to John McNeill for seven thousand three hundred and thirty dollars.

MALCOM SMITH,
D. CRAWFORD, *by Sol.*

Received Nov. 30, 1847, and executed same day.

J. G. LYON, *U. S. M.*
By F. H. LYON, *D. M.*

DANIEL MCNEILL, complainant,
vs.
MALCOM SMITH and Daniel Crawford, ex'rs of John McNeill, defendants. } In chancery.

This cause after being argued by counsel is submitted at this term for a decree on the bill, answer, exhibits, and proof.

1. It appears to the satisfaction of the court, that on the twentieth day of January, in the year 1840, the testator advanced to the complainant the sum of seven thousand three hundred and fifty dollars, and took from the complainant his promissory note, a copy of which is exhibited, and made a part of the defendants' answer, marked with the letter A; that four thousand dollars of said sum was received by the complainant as a loan, and the remainder to be invested in the purchase of land in Mississippi for the joint benefit of the parties.

2. It further appears to the satisfaction of the court, that at the same time the testator received of the complainant fourteen negro slaves, and carried them with him to his residence in Alabama; that said slaves were to be held by the testator as security for the said sum of seven thousand three hundred and fifty dollars.

3. It further appears to the satisfaction of the court, that on the 23d day of February, in the year 1841, the complainant, further to secure the said sum of seven thousand three hundred and fifty dollars, sent to the testator in Alabama certain other slaves, and at the same time made a bill of sale to the testator for all the slaves, those received in 1840, and those sent to the testator in 1841, as aforesaid, a copy of which is exhibited to the defendants' answer, and marked with the letter E; that the slave Anthony, though named in said bill of sale, was not in fact sent to the testator.

4. It further appears that in the year 1840 the complainant confessed a judgment in the circuit court of the county of Marshall, Mississippi, for about the sum of seven thousand dollars; that said judgment

was intended for the further security of the said seven thousand three hundred and fifty dollars, and for the same debt, and not for any other debt or liability of the complainant to the testator.

5. It further appears to the satisfaction of the court, that in the year 1842 the complainant purchased of one Paul C. Read a certain tract of land in the State of Mississippi, for the sum of thirty-five hundred dollars, that the same was paid by the said Read's receiving four of the slaves named in the said bill of sale, to wit, Rial, Harriet, Jim and Becky, and four hundred dollars paid by complainant, and that the deed was made by the said Read to the testator, and received by him at that sum, to wit, thirty-five hundred dollars, in part payment of the said sum of seven thousand three hundred and fifty dollars.

It is therefore ordered, adjudged, and decreed, that the said slaves named in the said bill of sale, with the exception of the slave Anthony, were received by the testator as a security for the payment of the said sum of seven thousand three hundred and fifty dollars.

That three thousand five hundred dollars of said sum was paid and discharged by the land purchased of Paul C. Read, and conveyed to the testator as of the date of said purchase.

It is further ordered and decreed, that the complainant is entitled to redeem so many of the said slaves as were in the possession of the testator at the time of his death with their increase, and are still alive, upon the payment of the balance of the said sum of seven thousand three hundred and fifty dollars, after allowing to the complainant the yearly value of the said slaves; and it is referred to the master to take and state an account between the parties upon the basis of this decree, and report to this court at the next term thereof; and in taking said account the said master will, in addition to the evidence already taken by deposition, hear such further evidence as the said parties may produce at the time of taking said account, and that in ascertaining the yearly value of said slaves, the master will estimate their value in the State of Alabama.

Subpœna for witnesses.

District court of the United States, for the middle district of Alabama.

The President of the United States, to the marshal of said district, greeting.

You are hereby commanded to summon H. P. Lee and Justus Wyman, if to be found in your district, at the instance of the plaintiff, to be and appear before the clerk of the district court aforesaid, at his office in Montgomery, instanter, then and there to testify and the truth to say in relation to taking an account, under a decree of said court, in a certain cause pending, wherein Daniel McNeill is plaintiff, and Daniel Crawford and Malcom Smith, ex'rs, are defendants.

Herein fail not, and have you then and there this subpœna

Witness the hon. William Crawford, judge of said court, the fourth Monday of May, A. D. 1848. Issued the 1st day of December, 1848.

Attest: A. G. GOOCH, *Clerk*,
D. C. Mid. Dist. of Ala.

Issued 1st December, 1848.

Marshal's return, &c.

Received 1st December, 1848, and executed same day in full.
J. G. LYON, *U. S. M.*
By F. H. LYON, *D. M.*

Exhibit A.

Know all men by these presents, that I, Paul C. Read, for and in consideration of thirty-four hundred dollars, to me in hand paid by John McNeill, the receipt whereof I do hereby acknowledge, do hereby grant, bargain, sell, enfeoff, and confirm, unto the said John McNeill the following described tract or tracts of land, to wit, the north half of section thirty, township four, and range one, and that portion of the northwest quarter of section twenty-nine, in the same township and range, supposed to contain about fifty acres, lying on the west [of] side of Tihualla creek, all situate in the Chickasaw cession, in Marshall county, in the State of Mississippi.

To have and to hold the afore granted premises, to the said John McNeill, his heirs and assigns, to their use and behoof forever. And I do covenant with the said John McNeill, his heirs and assigns, that I am lawfully seized in fee of the afore granted premises; that they are free from all incumbrances; that I have a good right to sell and convey the same to the said John McNeill, his heirs and assigns; and that I will warrant and defend the said premises to the said John McNeill, his his heirs and assigns, forever, against the lawful claims and demands of all persons.

In witness whereof I, the said Paul C. Read, have hereunto set my hand and seal this nineteenth day of August, in the year of our Lord one thousand eight hundred and forty-two.

PAUL C. READ. [L. S.]

Signed, sealed, and delivered in presence of—
J. W. HAYNE,
D. MCNEILL.

THE STATE OF MISSISSIPPI, *Marshall county, ss.*

Personally appeared before me, Gordentia Waite, clerk of the probate court of said county, D. McNeill, one of the subscribing witnesses to the within deed, who, being first duly sworn, deposeth and saith, that he saw the within named Paul C. Read sign, seal, and deliver the same to John McNeill; and that he, this deponent, subscribed his name as a witness thereto in the presence of the said Paul C. Read; and that he

saw the other subscribing witness, J. W. Hayne, sign the same as a witness in presence of the said Paul C. Read, and in the presence of each other, on day and year therein named.

Given under my hand and the seal of said court at office, the 13th day of December, 1844.

GORDENTIA WAITE, *Clerk*.

THE STATE OF MISSISSIPPI, *Marshall county, ats.*

I, Gordentia Waite, clerk of the probate court of said county, do hereby certify, that the within deed was this day received and duly recorded in my office, together with the above certificate, in deed book L, pages 613 and 614.

Given under my hand and the seal of said court at office, the 13th day of December, 1844.

GORDENTIA WAITE, *Clerk*,
By WILLIAM CHISM, *D. C.*

Exhibit B.

HOLLY SPRINGS, MISS., *24th Aug.*, 1840.

MY ESTEEMED FRIEND: I finally came to the conclusion to write. This is a duty I have put off ever since I received yours, under the belief that I would see you before a letter could reach you; but innumerable have been the train of intervening obstacles. Early in July my family were taken sick, and have continued so ever since; all are well now, but my little daughter. I am now ready to start, but have encountered a pecuniary disappointment that will compel my detention, I know not how long. I have a debt due me on Wm. Craft, and others, of this place, for $5,100, which I did think to bring in to your relief; the more effectually to secure punctuality in the payment of it, it was secured by a trust deed on 6 negroes and 800 acres of well improved land; but the money will not be paid in time to meet your demand, and I have resorted to a foreclosure of the deed of trust. I will have it closed in 30 or 40 days.

I have to watch him to keep him from running off the negroes. We will get all the negroes and the land. I would prefer the money, but there is no person able to bid the amount of our debt; and, as it is all he has, I will bid it up to a fair price. We have also an execution, now at maturity, against all of the Hollands, for $3,000; but, under the laws of this State, it can't be collected before January next. I had it levied on negro property, and will [get] either the money or negroes. It will be unsafe to make much calculation on my raising much money by the time spoken of in yours; but, if no convenient way occurs to you of raising the amount, you had better carry up the case by some process, till I can bring my arrangements here to bear in your relief. In the mean time, I want you to understand, that if the money is to be raised by a sacrifice of property, I am the man who ought to make it; and it is impossible for me, in Mississippi, to sell any thing for money.

You are, therefore, fully authorized to dispose of, in any manner you

think proper, any property you have of mine for your benefit. In doing which it will only be justice to yourself, and the only course I can pursue, that your kindness to us may not turn out to your own injury.

I will here remark to you, that a short time previous to last court I became alarmed, on account of some heavy liability I was under for our friend, General Davis, and others; and to avoid a sacrifice of my property in case of failure, I confessed judgment to you, or in your favor, for $7,000 (seven thousand). I am now satisfied I shall not suffer any loss; but, as the judgment stands, it will be necessary for you to write (enclosed to me) to Jas. L. Totten (your attorney) to retain the judgment lien on the property, but not to sell till further orders from you. This looks strange to you, but I thought it necessary, as well for your security as my own protection.

I am fearful you think hard of me for not visiting you ere this. But, my dear friend, if you knew with what sleepless vigilance I have had to watch and combat the swindling artifices of men about here, you would see, at once, that the least relaxation of vigorous energy, or ten days' absence, would have effectually ruined me. I shall soon have brought all my business, in this country, to a close; the storm will then have passed over, and in domestic quietude will I retire, and near you unhesitatingly will I permanently settle.

Your last letter (speaking of Stapler's failure) I did not show to Jane; nor shall she see this, as it would render her unhappy. She is anxious to move to your country.

My highest respects to cousin Matilda, and believe, truly yours,

D. McNEILL.

P. S.—Please write to us. I will be there as soon as I can.

Proved 2d December, 1847, in open court.

Teste, A. G. GOOCH, *Clerk*.

AT HOME, one mile of Holly Springs,
13*th October*, 1840.

DEAR COUSIN: I had the pleasure of receiving yours, of 17th Aug., but one or two days after I had written you last. And as mine, of that date, conveyed intelligence of all matters which I could say in reply to yours now before me, my answer has been postponed till the present, that I might give you some idea how the then "coming events" would "cast their shadows." In my last I gave you a correct account of my pecuniary inability to relieve you, at an early day, from your thraldom with Mr. Leeper, but advised the procrastination of the debt till I could bring my means to bear in your relief; but, in any event, authorized and requested you to throw my means at your command in the breach of your own individual sacrifice. This course I am prompted to advise, by the same feelings and motives which actuated you to assist me, for which you hold over me the highest obligation I owe

upon earth. And here I will again assure you, that such are the views I entertain of your feelings of kindness towards me and my family, that it will be impossible for you to pursue a course that will not meet my approbation. If practicable, however, to obtain further time on Leeper's debts, I will be able, I think, to save a sacrifice from us both. In my last I spoke of a trust deed we held over William Craft, of this place, for $5,100. This deed will mature by the 1st February, for the whole amount. I do not think there is that much money in the country; but we will get 5 negroes and 800 acres land, near here, with valuable improvements, for which he paid $6,000.

The judgment versus the Hollands is not yet levied; it is for about $3,000. I shall endeavor to have it levied on negro property in 2 or 3 weeks. Ham. Thornton wants to buy back his land, but is only willing to pay $2,500, which I have refused to take.

The above is a brief view of the old matters. I will now tell you what I am looking to for the future. I am now at work on old Boyd, and let it not surprise you if my next shall inform you that we have got his land. The marshal of the State was with us last night; he has an execution versus Boyd for $5,000, which he will levy on all 3 of his sections. The plaintiff demands gold and silver. I hardly think he (Mr. B.) can get it, as him and Cheers have fallen out. And if he fails to get the silver by sale day, this is the arrangement between me and the marshal: We are to have the land bid off by a friend, for our joint account and benefit, and he is to wait, with me for my half of the money till court, by which time I can get it. If I can carry this out, it will be a grand speculation. I presume it is unnecessary here to apologize for not having visited you ere this time; for I am sure, could I have been under the influence of your immediate counsel, you would have advised, and will approve, the course I have and am pursuing, with this solemn assurance and pledge of my honor that, so soon as I conceive I can possibly leave, I will be there. My lady sends her highest regards to cousin Matilda and yourself, and wonders why you do not write to her. I am also hoping daily to hear from you. I conclude with saying, I am, dear sir, with sentiments of the highest esteem, very truly, your obedient servant,

D. McNEILL.

Proved in open court 2d December, 1847.
Teste, A. G. GOOCH, *Clerk*.

NEAR HOLLY SPRINGS, *Feb. 12th*, 1841.

MY ESTEEMED FRIEND: I have rented out this place, and shall start, to-morrow, to my mother's. My intention was, before this, to have been on my road to see you; but such has been the last month or two of incessant rain, that the roads are impassable.

I am now occupying an hour between midnight and day. And many and often, my dear friend, are the recurrence of times like this with me—times, when all human beings, and even still and solemn

nature, seem blessed with repose, and I am doomed, in restless forebodings of the ills of the future, to brood over and anticipate misfortunes which, I think, have fallen to the lot of but few men besides myself. One remarkable fact is this, that in my intercourse with the world, besides yourself, B. E. Bourland, and some few others, I have scarcely ever found a man who would not, and has not, taken advantage of my confidence. I have ever made a punctilious observance of honorable principles my unerring rule of action; but it has ever been my fate to fall a victim to my own benevolence. My dear sir, I assure you I am not less than $50,000 loser by the people of Mississippi, and am yet greatly behind. I have signed no note nor paper, as security, since you left here; but recent developments of the situation of the people of this country show me, now, that I have to meet every dollar I have ever made myself liable for. But I can meet it all this year. If I can get off, I will start to see you as soon as the roads get so that I can travel; but I am wholly unable to pay you any money; if my life was in stake, I could not raise it. I have started to your house 10 or 12 negroes; they are at John P. Cunningham's. The bills of sale are all in your name, except Jim, Stokes, Rose and her children, and they are under mortgage to you of record here. They will be forwarded on as soon as the roads will permit. If, however, you find it convenient, send for them. There *is* 12 others here, including our house servants, 5 of them at Craft's tavern, in town, 2 women, 1 girl, and two children. I got them of Craft, and if he pays $2,000 by 25th December, they are to be re-conveyed.

I am writing under great depression of feelings, because I know you expect, and have a right to expect, me to pay you some money, and it is out of my power. And if you cast me off from all future business connexion, as you suggest in your last you may do, if I shall fail in being able to pay $3,000 or $4,000, at the same time that you will find me willing to admit the justice of your course, you will find me honorable, and not ungrateful. And the recollection of your kindness to me and my little wife and children, mingling with the best feelings of frail human nature, shall cling around the altar of our family gratitude, and, in the language of Byron, "form the greenest spot on memory's waste." My best respects to you and yours, and believe [me] yours, till death,

D. McNEILL.

February 23d.

The foregoing has been neglected to be mailed until Revils has got ready to start; as it may contain some apology for my many derelictions, and as I have much writing to do to-night, I forward it, presuming you have much leisure, and the tax on your patience may not seem irksome.

I send you also a bill of sale for all the negroes. You will [do] with them as you may think best; it would be extremely impolitic and unwise, I find, for me at this time to leave here; I find there are several fellows here, who hold over me demands as security for others, are postponing any process against those who owe the debts, thinking to

lay them on me in Alabama, with a hope that, by oppressing me there, *that* to relieve me you will make yourself liable; for me to be there and be the subject of oppression, would be no less mortifying to me than it would be unpleasant to you. I, therefore, have concluded to remain here and bring all these matters to a close. I know I can do it this summer. Our old friend, General Davis, has given up. I shall lose by him; the whole country is a wreck. I think I am as well off as any of them, and the experience of the past has shown conclusively that there is none of them who possess over me any advantage in the way of financiering. Our mill establishment here is doing well, and if I had time to give it my own attention, would make $500 per year; it sold here a year ago for about $7,000. I have offered it for $3,500 to get money to send you, but no man in this country has got the money. I have not seen any of the Bradfords yet to get the Nos. of Tipton B. land; as soon as I can I will see it, and write you all particulars. My wife will go on to her father's, with a view of staying there until after there shall be another urchin added to the stock of suffering humanity, and she will then go to your house; she, at least, will never return here till we determine where we will finally settle. I am inclined to the belief that you would prefer moving here; and as soon as I can get away from here alive, I will be there, ready to serve you in any way you think best. Uncle Malcolm has been trying hard to buy land; I think has bought or will buy Reed's, near Hamer; all of Alexander's brothers-in-law and his mother-in-law live in the place I rented where I last lived. Uncle Alexander is beating along with his difficulties, and comes to see us frequently—is entirely friendly and kind. Uncle Daniel will move out this spring; will settle, I think, in the neighborhood of Lamar or Lagrange.

Proved in open court, 2d December, 1847.

Teste: A. G. GOOCH, *Cl'k.*

Exhibit E.

Know all men by these presents, that I, D. McNeill, for and in consideration of the sum of twelve thousand dollars, to me by John McNeill in hand paid, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents doth bargain and sell, unto the said John McNeill, the following negro slaves for life, to wit: Rial, Harriet, Jim, Beckey Read, Billy, Fanny, Bill, Frances, Little Bill, Horacy, Mose, Squire, Rose, Essex, Anthony, Harriet Read, Demetree, and Rose's infant child, Stokes, Peter Holland, Nancy Holland, Milly, Ellen, Becky; to have and to hold the above negroes free from the claim of all persons whatever, also warrant the negroes to be sound and the title good.

Given under my hand and seal this 23d February, 1841.

D. McNEILL. [L. S.]

Proved in open court, 2d December, 1847.

A. G. GOOCH, *Cl'k.*

One day after date, I promise to pay John McNeill, or bearer, seven thousand three hundred and fifty dollars (borrowed money,) value received. Given under my hand and seal, this 20th January, 1840.

DAN'L McNEILL. [SEAL.]

Exhibit F.

Memphis place	1,280
McNeill place	320
Willis place	560
Reed place	560
Plaer ½ sec.	320
My homestead	640
Saunder's place	160
Robertson's place	160
Lancray (taxes)	160
Old Home place	320
Boyd	640
Mill place	320
	5,440

Proved in open court, 2d December, 1847.
Teste: A. G. GOOCH, *Clerk.*

A.

JAMES L. TOTTON, esq.,

DEAR SIR: My friend, D. McNeill, informs me that my instruction to you as my attorney in the collection of my debt against him is not sufficiently explicit. I have given him instructions as to the course I wish you to take in the matter, and what he communicates to you, you will regard as my instructions to you. I have bought out Read, his land, crop, stock, &c., &c. Should there be any interference with it, you will commence suit immediately for the slightest violation of my rights.

August 19th, 1842. JOHN McNEILL.
(J. L. T.)

B.

COOSA COUNTY, (ALA.,) *Oct. 17th*, 1840.

Mr. TOTTON:

MY DEAR SIR: I learn that you have taken a judgment against my friend, Da'l McNeill, which I hope he does not think hard of me for requiring the same, as it is a just debt and loaned money. Dear sir, I wish you to retain the judgment as a lien on the property, but not to sell any property until further orders from your humble serv't.

There is nothing here, only hard times, and nothing talked of only making new Presidents.

I am yours, sincerely, while, J. McNEILL.
(J. L. T.)

C.

SOCEPETOY, COOSA COUNTY, (ALA.,) *Oct. 18th*, 1840.

DAN'L MCNEILL:

MY DEAR SIR: Inclosed you will find a letter directed to your friend, Totton, informing him what to do; I have written it I expect so as to answer the purposes it is intended for. I am still in a *tite* place, but keep scuffling, and *has* kept the officer, as yet, from selling any thing, but has made one or two levies on my property; but I had a friend who relieved me, whom I shall always esteem as a friend, and if I live he shall be rewarded for the same; it is nobody less than Jos. H. Bradford, cousin to those Bradfords in there, (the General.) I must conclude, for I have not one single sheet of paper about the house at this time—one-half to you, the other to Totton.

We are all well, and will be looking for you constant; give my sincere love to cousin Jane, and receive to yourself the same; my wife joins in love to you all.

I am yours, truly,

J. MCNEILL.

D.

SOCEPETOY, ALA., *December 13th*, 1842.

MY DEAR COUSIN DANIEL: I have just received yours, bearing date Nov. 4, which was gratifying to me to hear from you at any time, and more particularly when I hear of your welfare; I am glad to hear from cousin Jane and family being well, and also all of our relatives; you have not informed me in your last how cousin Malcom was getting, or whether he had got well or not. I would have written to you before this time, but constant waiting and expecting to hear from you every day, knowing you *was* so full of trade when I last saw you; I expected to hear every day that you and Mr. Read had made several, as you and myself *was* talking of several that might be made with said R.; you have not informed [me] of any disposition you made of Nancy, Jim's wife; you had better swap her for Harriett, as Harriett is anxious that I should get her, or that R. should buy Stanly; she says she never wants to part with him; she pretends to say that she is in a family way by Stanley; but it would not do to tell R. that she was in that fix, or it would be harder to get her from him. If he will not swap even, or nearer so, make some other trade with him, so that he gets Nancy; you may tell him that H. is very anxious to stay with me. I want you also to make some kind of a trade with Jonathan for some $2,000 of his good money; sell him Loratha, Gilbert and family; Loratha is not worth a dime; she is now up here and well; she has been under the doctor ever since you *was* here, but is now as well as she ever was. I want you also to inform me, if there is any of the Planters and Merchants' Bank money in circulation in your country; the bank is broke, and I want to buy up the paper as low as possible, say 50 or 25 cents

to the dollar. I owe the bank $2,200, and I want to pay it as cheap as possible; give me all the information you can on those subjects before you. Now for my colts: I sent my horses to Jacksonville; my Leviathan, or rather Ellen Hutchinson, won gallantly the 2-mile day; she beat a great many fine nags that started; she beat the daughter of Sally McGee, sired by the imported Lufborough; my horse started on the 3-mile day, run against three very crack nags, one a Lufborough, one-half brother to John Bascomb, the other I do not recollect his blood, (that is, my Shatau horse, or otherwise Jim Jewell; he did not win the race, but pleased me fully as well; he came in a half a length of it, and distanced John Bascomb's brother, who followed him from Lowndes county purposely to beat him; that was the funny part, when he followed my horse all that way purposely to beat him, and that my horse should then distance the same; my trainer says there is not a better game horse in the United States, Boston [and] Fashion notwithstanding.

I have entered one gold mine since I saw you, and have just contracted the one that I had when you were here, for $10,000, but a long credit, 1, 2, 3, and 4 years; same day I have fooled it away, but I am always willing to be fooled for that amount of money; the one that I entered since you was here is about 4 miles from the other; it is said to be very rich; five boys beat rock with a hand pestle, and a common mortar, and washed out at night $60, which was 12 dollars to the hand, that is a mine just like my mine; I am a going to prepare and work all my men and boys, and hire a good many hands also to work in the gold mines; you had better rent the land out that you have not sowed in small grain, as [I] do candidly believe a fortune can be made in those mines; we are still hunting for more places to enter; the woods are full of people there; there are more than 100 persons there every day in search of gold; the most inferior mine that is in the whole region was sold the other day to Col. Watson, from Columbus, Georgia, ½ interest in 80 acres, for $5,000; we can enter several that we think better than that, but will not, looking for better; the gold fever is raging very high at this time; I must quit until next; your son John is well, and doing well.

I start in three days to Georgia, to get my legacy that I went after 2 years ago; whenever you can make it convenient, come [illegible] and I will accompany you home; tell cousin Jane we are [illegible] would be mighty glad to see her here, or there either; John [illegible] well and doing well; we are all well, only I am troubled [illegible] you was here with the bowel complaint, so is Mrs. Crawf[illegible] this day to Mr. Crawford to prepare himself to come and superintend the gold mines. I expect I will take the one back that I [illegible]; I will make up here upward of 80 bags of cotton, averaging over [illegible] the bag, and between 3 and 4 thousand bushels of corn; gold! gold! is the cry now; we all send our love to you and family, to your mother, and Margaret particularly; tell Margaret I will write to her after I get over my fever and hurry of business. Yours, truly,

JOHN McNEILL.

Write soon. I will go and see you all as soon as I can possibly go.

UNITED STATES OF AMERICA,
Northern district of Mississippi, Marshall county.

Be it remembered, that on this twenty-eighth day of May, in the year of Lord one thousand eight hundred and forty-six, before me, Tryon M. Yancy, judge of the probate (or county) court of Marshall county, in the State of Mississippi, personally appeared John Brown, David Lawing, Benjamin D. Thompson, and Hamilton Thornton, witnesses of sound mind and lawful age, for the complainant, in a certain matter of controversy now depending in chancery in the district court of the United States, for the middle district of Alabama, at Tuscaloosa, wherein Daniel McNeill is complainant, and Malcom Smith and Daniel Crawford, executors of the last will and testament of John McNeill, deceased, defendants; and the said witnesses being by me first carefully examined, and cautioned, and sworn, on the holy evangelist of Almighty God, to testify the truth, the whole truth, and nothing but the truth, did depose and say as follows, to wit:

The said John Brown did depose and say, I reside in the county of Marshall, and State of Mississippi, more than one hundred miles from Tuscaloosa, in the State of Alabama; I am acquainted with Daniel McNeill, the complainant in this cause, and with the defendant Malcom Smith, but do not know the defendant Daniel Crawford; about the fifteenth of March, 1841, I went to and took charge of the mills of complainant in Marshall county, Mississippi; between two and four weeks thereafter, say in 1841, Littlebury Revels returned from the residence of John McNeill, the testator of the defendants in Alabama, bringing with him a letter from said John McNeill to the complainant, which letter I read, and the purport of which was, that on a certain day, which I do not now recollect, said Revels arrived at his (said John McNeill's) house with some negroes and horses, the number of which, though stated in said letter, I do not now recollect, but which were acknowledged in said letter to be the property of complainant; said letter was left at said mills by said complainant, and thrown about as if it was of no importance, and I believe it has been lost or destroyed, for I have searched for it diligently, and have not been able to find it; and further this deponent saith not.

JOHN BROWN.

Sworn to and subscribed before me, this 28th day of May, 1846.
T. M. YANCY, *Judge, &c.*

The said David Lawing did depose and say, as follows: I reside in the county of Marshall, and State of Mississippi, more than one hundred miles from Tuscaloosa, in the State of Alabama. I am acquainted with the complainant in this cause, Daniel McNeill, and was acquainted with John McNeill, the testator of the defendants, in his lifetime. In January, 1840, I was living with the complainant, in Marshall county, Mississippi, when said John McNeill visited the complainant; at that time the said John McNeill loaned the complainant four thousand dol-

lars, for the purpose, as I then understood, of enabling the complainant to clear the titles to some land, but I do not recollect what lands they were; afterwards, and during the same visit, the said John McNeill, in my presence, counted out and delivered to the complainant something upwards of three thousand dollars in cash; which, as I understood from both parties at the time, was to be invested by the complainant in lands in Mississippi for their joint account; at that time complainant executed his note to the said John McNeill for both sums advanced as aforesaid; I think the note was dated in January, 1840, and was for upward of seven thousand dollars; it was understood by both parties at that time, that said note covered all transactions between them up to that time; at the same time, it was also agreed between the parties that the said John McNeill should take home with him a sufficient number of negroes *home with him* belonging to complainant to secure himself in the amount of said note; accordingly when John McNeill left Mississippi for Alabama he took with him fourteen negroes belonging to complainant, which he was to hold as a collateral security for the payment of said note; he also took off with him a good wagon and four good mules, which, as such property was then selling here, were worth at least eight hundred dollars; the hire of the said fourteen negroes at that time would have been worth here at least twelve hundred dollars per annum; and said John McNeill assured the complainant that said negroes should be equally, if not more valuable in Alabama; and stated that they could make more cotton there than here, and that the cotton was worth more there than here; among said lot of negroes was a small boy, a child of Lauricy, who was sometimes called Squire Washington, sometimes Squire, and sometimes Wash; about February or March, 1841, the complainant sent by Littlebury Revels to the said John McNeill, ten or eleven other negroes, and at the same time by said Revels a bill of sale for said ten or eleven negroes, and the fourteen negroes taken by the complainant as aforesaid; the hire of said negroes sent by said Revels was worth three hundred dollars per annum; in the year 1842 the complainant purchased of one Paul C. Reed a tract of land in Marshall county, Mississippi, of about four hundred acres, with a small lot of stock and a growing crop of corn, for the price of thirty-five hundred dollars; said land was a part of section thirty, township four, range one west; said Reed was to receive in payment negroes of the complainant then in the possession of John McNeill in Alabama; said Reed afterwards went to Alabama and returned with four of said negroes, namely, Rial, Harriett, Jim, and Becky, which paid said Reed for the purchase of said land, with the exception of four hundred dollars, which was paid by complainant to said Reed in cash; and further this deponent saith not.

DAVID LAWRENCE.

Sworn to and subscribed before me, the 28th May, 1846.

T. M. YANCY, *Judge*, &c.

The said Benjamin D. Thompson says, that I reside in the county

of Marshall, and State of Mississippi, more than one hundred miles from Tuscaloosa, in the State of Alabama, and says, that in the month of January or February, 1839 or forty, I met John McNeill and Daniel McNeill, in La Grange, Tennessee, near which place the said Daniel McNeill then resided; at that time the said John McNeill said that he was about to loan Daniel McNeill about seven thousand dollars; and was to take some negroes belonging to said Daniel McNeill home with him as a security for said loan; and that he was to allow said Daniel McNeill hire for said negroes; and said John McNeill said the hire of said negroes were worth more in Alabama than they were in Mississippi; and I think the said John McNeill took off fourteen negroes, among which was a blacksmith, worth three hundred dollars per annum; and the hire of all said fourteen negroes was worth at least fifteen hundred dollars per annum; I have looked at letters purporting to have been signed by John McNeill, marked A, B, C, and D; D being a sheet and a half, and marked twice; I am acquainted with the handwriting of John McNeill, having seen him write, and upon such knowledge thus acquired I state it as my opinion that the signature to all said letters are his own proper handwriting; and further this deponent saith not.

B. D. THOMPSON.

Sworn to and subscribed before me, the 28th day of May, 1846.

T. M. YANCY, *Judge, &c.*

The said Hamilton Thornton did depose and say, I reside in the county of Marshall, State of Mississippi, more than one hundred miles from Tuscaloosa, in the State of Alabama; that in 1840, as I now recollect, in January, John McNeill, the testator of the defendants, came to the residence of Daniel McNeill, in the county of Marshall, State of Mississippi, and saw him there frequently while he remained; I was at the residence of complainant when said John McNeill started home, and he took with him fourteen negroes, which belonged to said complainant, and a wagon and four mules; the mules and wagon were at that time worth from six to eight hundred dollars here; I understood from both parties, that the complainant had sold to one James M. Boyd three sections of land, and on account of judgments against complainant, which bound the land, he was unable to make title to said Boyd; and that said John McNeill had loaned to complainant the sum of four thousand dollars for the purpose of enabling him to pay off said judgments; and the said John McNeill had also loaned to the complainant a further sum of money of something upwards of three thousand dollars, for what purpose I was not informed; and I understood from both parties at the time, that the said negroes were taken by the said John McNeill, as a security for the money advanced by him to the complainant; and that the complainant was to have the right of taking back said negroes, when he should refund said money; at that time, I understood from both parties, complainant had made an absolute sale of two negroes, Bob and Caroline, to the said

John McNeill, which two were not included in the number of fourteen; that I have spoken of the said John McNeill; told complainant that said fourteen negroes would be worth to him in Alabama more than they would be to complainant here, and that complainant should have all they made; and I believe the hire of said fourteen negroes was worth at that time from a thousand to twelve hundred dollars per annum; and in the early part of the year 1841, the complainant sent to said John McNeill, in Alabama, by one Littlebury Revels, who died about June, 1841, ten or eleven other negroes, worth at least three hundred dollars per annum; the complainant purchased of Paul C. Reed, of Marshall county, Mississippi, a tract of land in said county, the title to which was taken to said John McNeill, and which was paid for in part by four of the fourteen negroes, which the said John McNeill took from complainant in 1840, to wit, Rial, Harriett, Jim, and Becky, which negroes were brought from Alabama by said Paul C. Reed; and further this deponent saith not.

HAMILTON THORNTON.

Sworn to and subscribed before me, the 28th day of May, 1846.

T. M. YANCY, *Judge, &c.*

At this time, the day being far spent, the examination of witnesses was adjourned until to-morrow.

T. M. YANCY, *Judge, &c.*

UNITED STATES OF AMERICA,
Northern district of Mississippi, county of Marshall.

Be it remembered, that on this 29th day of May, one thousand eight hundred and forty-six, before me, Tryon M. Yancy, judge of the probate court, (or county court,) of Marshall county, in the State of Mississippi, personally appeared James Cunningham and James L. Totton, witnesses, of sound mind and lawful age, for the complainant, in a certain matter of controversy now pending in chancery, in the district chancery court of the United States, for the middle district of Alabama, at Tuscaloosa, wherein Daniel McNeill is complainant, and Malcolm Smith and Daniel Crawford, executors of the last will and testament of John McNeill, deceased, are defendants; and the said witnesses *and the said witnesses* being by me first carefully examined, and cautioned, and sworn on the holy evangelist of Almighty God, to testify the truth, the whole truth, and nothing but the truth, did depose and say as follows, to wit:

The said James Cunningham did depose and say, that I reside in the county of Marshall, and State of Mississippi, more than one hundred miles from Tuscaloosa, in the State of Alabama; I am acquainted with Daniel McNeill, the complainant in this cause, and with the defendants' testator, John McNeill; some time in the year 1840, as well as I now recollect, I was at Daniel McNeill's residence, and John McNeill was there, and I learned in a conversation between Daniel McNeill and John McNeill, that he, John McNeill, had let Daniel McNeill have

three thousand dollars, and if Daniel wanted any more, he, John McNeill, had upwards of three thousand dollars in his pocket that he could spare, and if he, Daniel, said so, he could have [it]; and pulled the money out of his pocket and gave it to him. Shortly afterwards, myself and John McNeill left Mississippi for Alabama; John McNeill had twelve or fourteen negroes with him, and one wagon and team; and in a conversation on our way, John McNeill told me that he had actually purchased two negroes of Daniel, Bob and his wife Caroline, and gave me to understand that the balance of the negroes were taken as collateral security for the payment of the seven thousand dollars advanced by said John McNeill to said complainant; I went on in company with John McNeill, as far as Lauderdale county, Alabama. And further this deponent saith not. JAMES CUNNINGHAM.

Sworn to and subscribed before me, the 29th May, 1846.

T. M. YANCY, *Judge, &c.*

The said James L. Totton did depose and say that I reside in the county of Marshall, and State of Mississippi, which I am informed and believe is more than one hundred miles from the city of Tuscaloosa, in the State of Alabama; some years since Daniel McNeill, complainant, called at the office of Totton & Greer, at Holly Springs, and informed this deponent that he had borrowed of John McNeill, his relation, about the sum of seven thousand dollars, as well as I now remember; that he had placed in his, John McNeill's, hands some negroes as security; I do not remember how many, or whether the said Daniel stated how many; he said that, owing to the difficulty of the times in pecuniary matters, he was apprehensive that the security given was not sufficient to repay said sum of money; and that, as suits were pending in the circuit court of Marshall county against him, for a large amount of money, and some of it security money, he was desirous of amply securing said John McNeill in the payment of said loaned money; to this end he sat down and made a note for about the amount above stated, and employed Totten & Greer to bring suit on it in the name of John McNeill, against him. He stated that his object was, in so doing, to give the debt of said John McNeill a preference by judgment lien over his other creditors; suit was brought, and judgment had on said note, in the circuit court of Marshall county, and is the only judgment Totten & Greer ever obtained in said court against said Daniel McNeill in favor of John McNeill; I afterwards received two letters in relation to said judgment, purporting to be written by John McNeill, and addressed to me; which letters are here enclosed as part hereof, and marked, J. L. T. It is proper here to add, that I never saw John McNeill, nor did I ever have any correspondence with him, except the two letters enclosed; am not acquainted with his handwriting.

JAMES L. TOTTON.

Sworn to and subscribed before me, the 29th May, 1846.

T. M. YANCY, *Judge, &c.*

John McNeill, which two were not included in the number of fourteen; that I have spoken of the said John McNeill; told complainant that said fourteen negroes would be worth to him in Alabama more than they would be to complainant here, and that complainant should have all they made; and I believe the hire of said fourteen negroes was worth at that time from a thousand to twelve hundred dollars per annum; and in the early part of the year 1841, the complainant sent to said John McNeill, in Alabama, by one Littlebury Revels, who died about June, 1841, ten or eleven other negroes, worth at least three hundred dollars per annum; the complainant purchased of Paul C. Reed, of Marshall county, Mississippi, a tract of land in said county, the title to which was taken to said John McNeill, and which was paid for in part by four of the fourteen negroes, which the said John McNeill took from complainant in 1840, to wit, Rial, Harriett, Jim, and Becky, which negroes were brought from Alabama by said Paul C. Reed; and further this deponent saith not.

HAMILTON THORNTON.

Sworn to and subscribed before me, the 28th day of May, 1846.

T. M. YANCY, *Judge, &c.*

At this time, the day being far spent, the examination of witnesses was adjourned until to-morrow.

T. M. YANCY, *Judge, &c.*

UNITED STATES OF AMERICA,
Northern district of Mississippi, county of Marshall.

Be it remembered, that on this 29th day of May, one thousand eight hundred and forty-six, before me, Tryon M. Yancy, judge of the probate court, (or county court,) of Marshall county, in the State of Mississippi, personally appeared James Cunningham and James L. Totton, witnesses, of sound mind and lawful age, for the complainant, in a certain matter of controversy now pending in chancery, in the district chancery court of the United States, for the middle district of Alabama, at Tuscaloosa, wherein Daniel McNeill is complainant, and Malcolm Smith and Daniel Crawford, executors of the last will and testament of John McNeill, deceased, are defendants; and the said witnesses *and the said witnesses* being by me first carefully examined, and cautioned, and sworn on the holy evangelist of Almighty God, to testify the truth, the whole truth, and nothing but the truth, did depose and say as follows, to wit:

The said James Cunningham did depose and say, that I reside in the county of Marshall, and State of Mississippi, more than one hundred miles from Tuscaloosa, in the State of Alabama; I am acquainted with Daniel McNeill, the complainant in this cause, and with the defendants' testator, John McNeill; some time in the year 1840, as well as I now recollect, I was at Daniel McNeill's residence, and John McNeill was there, and I learned in a conversation between Daniel McNeill and John McNeill, that he, John McNeill, had let Daniel McNeill have

three thousand dollars, and if Daniel wanted any more, he, John McNeill, had upwards of three thousand dollars in his pocket that he could spare, and if he, Daniel, said so, he could have [it]; and pulled the money out of his pocket and gave it to him. Shortly afterwards, myself and John McNeill left Mississippi for Alabama; John McNeill had twelve or fourteen negroes with him, and one wagon and team; and in a conversation on our way, John McNeill told me that he had actually purchased two negroes of Daniel, Bob and his wife Caroline, and gave me to understand that the balance of the negroes were taken as collateral security for the payment of the seven thousand dollars advanced by said John McNeill to said complainant; I went on in company with John McNeill, as far as Lauderdale county, Alabama. And further this deponent saith not. JAMES CUNNINGHAM.

Sworn to and subscribed before me, the 29th May, 1846.
T. M. YANCY, *Judge, &c.*

The said James L. Totton did depose and say that I reside in the county of Marshall, and State of Mississippi, which I am informed and believe is more than one hundred miles from the city of Tuscaloosa, in the State of Alabama; some years since Daniel McNeill, complainant, called at the office of Totton & Greer, at Holly Springs, and informed this deponent that he had borrowed of John McNeill, his relation, about the sum of seven thousand dollars, as well as I now remember; that he had placed in his, John McNeill's, hands some negroes as security; I do not remember how many, or whether the said Daniel stated how many; he said that, owing to the difficulty of the times in pecuniary matters, he was apprehensive that the security given was not sufficient to repay said sum of money; and that, as suits were pending in the circuit court of Marshall county against him, for a large amount of money, and some of it security money, he was desirous of amply securing said John McNeill in the payment of said loaned money; to this end he sat down and made a note for about the amount above stated, and employed Totten & Greer to bring suit on it in the name of John McNeill, against him. He stated that his object was, in so doing, to give the debt of said John McNeill a preference by judgment lien over his other creditors; suit was brought, and judgment had on said note, in the circuit court of Marshall county, and is the only judgment Totten & Greer ever obtained in said court against said Daniel McNeill in favor of John McNeill; I afterwards received two letters in relation to said judgment, purporting to be written by John McNeill, and addressed to me; which letters are here enclosed as part hereof, and marked, J. L. T. It is proper here to add, that I never saw John McNeill, nor did I ever have any correspondence with him, except the two letters enclosed; am not acquainted with his handwriting.

JAMES L. TOTTON.

Sworn to and subscribed before me, the 29th May, 1846.
T. M. YANCY, *Judge, &c.*

UNITED STATES OF AMERICA,
Northern district of Mississippi, county of Marshall.

I, Tryon M. Yancy, judge of the probate (or county) court, of Marshall county, in the State of Mississippi, do hereby certify, that the reason for taking the foregoing depositions is, and the fact is, that the witnesses, John Brown, David Lawring, Benjamin D. Thompson, Hamilton Thornton, James Cunningham, and James L. Totton, reside in the county of Marshall, and State of Mississippi, more than 100 miles from Tuscaloosa, in the State of Alabama, the place of trial of the cause for and in which said depositions are taken, and are necessary. I further certify, that no notification was made out and served on the defendants, their agent or attorney, to be present at the taking of the depositions and to put interrogatories if they might think fit; and that no notification of the time and place of taking the said depositions was made out and served on the said defendants, because neither the said defendants, nor any attorney or agent of the said defendants, were, at the time of taking the said depositions, within one hundred miles of the county of Marshall, the place of taking said depositions.

I further certify, that on the 28th day of May, 1846, I was attended by all of said witnesses, who were by me carefully examined, and cautioned, and sworn, on the holy evangelist of Almighty God, to testify the truth, the whole truth, and nothing but the truth, and the depositions of all the said witnesses were reduced to writing by me, and after reading the deposition of each witness to him, it was subscribed by him in my presence.

The depositions of John Brown, David Lawring, Benjamin D. Thompson, and Hamilton Thornton, were taken on the 28th day of May, 1846, when the day being spent, the examination was adjourned until the next day, at which time the depositions of James Cunningham and James L. Totton were taken.

I have retained all said depositions in my possession, for the purpose of sealing up, directing, and forwarding them to the court for which they were taken.

I further certify, that I am not of counsel or attorney to either of the parties in said depositions mentioned, or in any way interested in the event of said controversy depending between the said complainant and defendants.

In testimony whereof I have hereunto set my hand, and affixed my seal, this 29th day of May, 1846.

T. M. YANCY, [SEAL.]
Judge of the probate for county court of Marshal county, Mississippi.

Filed 3d December, 1846.
Teste: A. G. GOOCH, *Clerk.*

In chancery. District court of the United States, for the middle district of Alabama.

DANIEL MCNEILL
vs.
MALCOM SMITH and Daniel Crawford, executors, &c., of Jno. McNeill, deceased.

The testimony of Josiah S. Kennedy, taken by consent of parties, to be used on the argument of the above entitled cause as the testimony of the complainant. Peck & Clark's office, Tuscaloosa, December 7th, 1846.

The said witness being duly sworn, &c., deposeth and saith:

That in the month of June, and, as well as I remember, in the year 1841, I was at Col. John McNeill's, the deceased, in Coosa county; in a conversation with said deceased about the complainant, he said that, on his visit to the complainant the year before, he found the complainant in a pinch; that he had bought some land, and had only a bond for titles, and he was not to have titles until he had paid for it; that he, complainant, had sold the said land, and was to be paid when he, complainant, could make titles; that those who had purchased the land of complainant refused to pay until he, complainant, could make them titles; that complainant told deceased of his difficulties about the land, and deceased said he told complainant he could let him have the money to pay for the land so that he might get titles; that he did let him have the money, amounting to some thousands of dollars, but the amount witness does not remember; that deceased also said that before *before* he left complainant he let him have another sum, being over a thousand dollars, which complainant was to buy land with in copartnership with deceased; both sums, to witness' best recollection, amounted to some seven or eight thousand dollars; that when he returned home, he, deceased, took home with him twelve negroes of complainant to raise a crop with them for complainant; witness states that the number of the negroes is stated from his best recollection of their number.

Deceased further said, that the February after his said visit, the complainant sent his complainant's overseer to him, deceased, with eleven or twelve other negroes, and a bill of sale for all the negroes, both those which he, deceased, had brought out, and those sent by the overseer; that before these last negroes were sent out by the overseer deceased had written to complainant that he had become security for one Leeper to some merchants in New York, and he was pressed for the payment, and he, deceased, wished complainant to send him some money; that thereupon the complainant sent the negroes by the overseer with the bill of sale as aforesaid, with instructions that if it become necessary, that he, deceased, should sell enough of the negroes to pay the money, he, deceased, had loaned complainant; that deceased said he was not so near broke as to sell the complainant's negroes.

Witness says, the deceased in speaking of the directions to sell if it should be necessary, did not say whether the instructions to sell referred to the one or the other lot, or to all.

Witness further states in response to question of defendants, that some [time] after the conversation above named, complainant stayed all night with witness on his return from John McNeill's plantation in Autauga county, in company with one Read. Complainant then stated in a conversation with witness that he had some negroes along, brought from said plantation, which he had bargained to said Read for a tract of land which he had bought from him; and further deponent saith not.

JOSIAH S. KENNEDY.

Sworn to and subscribed before me, this seventh day of December, 1846.

T. F. SAMUEL, *J. P.*

It is agreed by the undersigned, solicitors for complainant and defendants, that the foregoing deposition of Josiah S. Kennedy may be read by either party on the trial of this cause; and it is further agreed, that the cause may stand continued until the next term by consent, with leave for either party to take further testimony either of the witnesses already examined or other witnesses.

December 7th, 1846.

PECK & CLARK,
Sol'rs for complainant.
W. W. MORRIS,
Sol'r for defendants.

Filed December 7th, 1846.
Teste: A. G. GOOCH, *Clerk.*

THE STATE OF MISSISSIPPI.

Be it remembered that, at a circuit court began and held in and for the county of Marshall, at the court-house in the town of Holly Springs, on the first Monday after the fourth Monday in May, being the first day of June, in the year of our Lord one thousand eight hundred and forty, there were present, the honorable Stephen Adams, judge of the ninth judicial district of the State of Mississippi presiding, when the following proceedings were had in the case herein after mentioned, to wit:

JOHN MCNEILL
vs. } Debt.
DANIEL MCNEILL.

On the 12th day of May, 1840, the plaintiff by his attorneys sued out of the circuit clerk's office of Marshall county, Mississippi, a capias ad respondendum in the words and figures, to wit:

The STATE OF MISSISSIPPI,
Marshall county, ss.

To the sheriff of said county, greeting.

You are hereby commanded to take the body of Daniel McNeill, if to be found in your county, and him safely keep so that you have him before the judge of the next circuit court, to be held for the county of Marshall, at the court-house in the town of Holly Springs, on the first Monday after the fourth Monday of May next, then and there to answer John McNeill of a plea that he render unto him the sum of seven thousand dollars, which to him he owes, and from him unjustly detains, to his damage one thousand dollars; herein fail not, and have you then and there this writ.

Witness the honorable Frederick W. Huling, presiding judge in the eighth judicial district of the State of Mississippi, the first [L. S.] Monday [of] September, 1839, the 64th year of American independence and seal of said court. Issued the 12th day of May, 1840.

Test. A. T. CARUTHERS, *Clerk.*

An action of debt founded on defendant's writing obligatory to plaintiff for $7,000, of date 10th January, 1840, and payable one day after date. The above sum, with interest, is the sum actually demanded. Dec., filed at the issuance of the writ. No bail required. Judgment will be required at the return term of the writ.

DAVIS, TOTTON & GREER,
Attorneys for plaintiff.

Which capias ad respondendum came to the hands of Levi McCrosky, sheriff, who thereupon made his return in the words and figures following, to wit:

Came to hand 12th May, 1840, executed same day.

LEVI McCROSKY,
By A. C. McEWEN,
Deputy sheriff.

Plea filed 3d day term.

A. T. CARUTHERS, *Clerk.*

On the 12th day of May, 1840, the plaintiff, by his attorney, filed his declaration in the words and figures, to wit:

The STATE OF MISSISSIPPI,
Marshall county circuit court.

June term, 1840.

John McNeil, by attorney, complains of Daniel McNeil, in custody, &c., of a plea that he render unto him the sum of seven thousand dollars, which to him he owes, and from him unjustly detains, for that heretofore, to wit, on the 10th day of January, 1840, in Marshall

county aforesaid, the said defendant, by the style of D. McNeil, by his writing obligatory, obligated and bound himself to the plaintiff to pay him or order the sum of seven thousand dollars, one day after the date thereof, for value received, which is now in court to be seen, &c.; yet the plaintiff in fact says, that the defendant has not paid the money in said writing obligatory specified, one day after the date thereof, or at any time since, or any part thereof, but to pay the same has hitherto wholly failed and refused, and still does, though often requested so to do, to wit, at the county aforesaid, to his damage one thousand dollars, and therefore he sues.

DAVIS, TOTTON & GREER, *Attys.*

Note in the words and figures following, to wit:

Dollars. HOLLY SPRINGS, *January 10th*, 1840.

One day after date I promise to pay John McNeil, esq., or order, seven thousand dollars, for value received. Witness my hand and seal.

D. McNEIL. [SEAL.]

Filed and writ issued, May 12th, 1840.

A. T. CARUTHERS, *Clk.*

On Friday, June 5th, 1840, judgment was rendered in the words and figures following, to wit:

JOHN McNEIL
vs. } Debt.
DANIEL McNEIL.

This day came the parties by his attorney, and the defendant made default. It is therefore considered by the court, that the plaintiff recover of the defendant seven thousand dollars, the debt in the declaration mentioned; also two hundred and twenty-five dollars fifty-four cents damages for the detention of said debt, and the costs in this behalf expended.

On the 30th day of July, 1840, an execution was issued in the words and figures following, to wit:

The State of Mississippi, to the sheriff of Marshall county, greeting:

We command you that of the goods and chattels, lands and tenements, of Daniel McNeil, late of your county, you cause to be made the sum of seven thousand dollars, which John McNeil, lately in our circuit court for the county of Marshall, hath recovered against him for debt, also the sum of two hundred and twenty-five and $\frac{54}{100}$ dollars, which to the said John McNeil, in the same court, were adjudged for his damages by reason of the detention of said debt; which interest on said sums, at eight per centum per annum, from the 5th day of June, 1840, until paid, also the sum of twelve and $\frac{25}{100}$ dollars, for his costs by him about his suit in that behalf expended, whereof the said Daniel McNeil is convicted, as appears to us of record; and that you have the said moneys before the judge of said court at the court-house in Holly Springs,

on the first Monday after the fourth Monday in November next, to render to the said John McNeil for his debt, damages, and costs aforesaid, and have you then and there this writ.

Witness the hon. Frederick W. Huling, presiding judge in the 8th judicial district of the State of Mississippi, the first Monday after the fourth Monday in November, 1840, the 64th year of American independence, and seal of said court. Issued the 30th day of July, 1840.

[L. S.]

Test. A. T. CARUTHERS, *Clerk.*

Bill of costs. *Judgment June 5th*, 1840.

Debt - - - - - - -	$7,000 00	
Damages - - - - - - -	225 54	
		$7,225 54
Clerk cost - - - - - -	7 00	
Jury tax - - - - - - -	3 00	
Sheriff fees - - - - - -	2 25	
		12 25
		$7,237 79

A copy of cost. Test.

A. T. CARUTHERS, *Clk.*

Sheriff return in the words and figures, to wit:

Came to hand same day issued. The within named defendant hath no goods nor chattels, lands nor tenements, whereof I can make the within named sum of money or any part thereof.

Nov. 30, 1840.

LEVI McCROSKY, *Sheriff*,
By A. C. McEWEN, *Dep.*

Execution in the words and figures, to wit:

The State of Mississippi, to the sheriff of Marshall county, greeting:

We command you that of the goods and chattels, lands and tenements, of Daniel McNeil, late of your county, you cause to be made the sum of seven thousand dollars, which John McNeil, lately in our circuit court for the county of Marshall, hath recovered against him for debt; also the sum of two hundred and twenty-five and $\frac{54}{100}$ dollars, which to the said John McNeil in the same court were adjudged for his damages by reason of the detention of said debt, with interest on said sums at eight per centum per annum, the 5th day of June, 1840, until paid; also the sum of fourteen dollars for his costs by him about his suit in that behalf expended, whereof the said Daniel McNeil is convicted, as appears to us of record, and that you have the said moneys before the judge of said court, at the court-house, in Holly Springs, on the first Monday after the fourth Monday in November next, to render

county aforesaid, the said defendant, by the style of D. McNeil, by his writing obligatory, obligated and bound himself to the plaintiff to pay him or order the sum of seven thousand dollars, one day after the date thereof, for value received, which is now in court to be seen, &c.; yet the plaintiff in fact says, that the defendant has not paid the money in said writing obligatory specified, one day after the date thereof, or at any time since, or any part thereof, but to pay the same has hitherto wholly failed and refused, and still does, though often requested so to do, to wit, at the county aforesaid, to his damage one thousand dollars, and therefore he sues.

DAVIS, TOTTON & GREER, *Attys.*

Note in the words and figures following, to wit:

Dollars. HOLLY SPRINGS, *January 10th*, 1840.

One day after date I promise to pay John McNeil, esq., or order, seven thousand dollars, for value received. Witness my hand and seal.

D. McNEIL. [SEAL.]

Filed and writ issued, May 12th, 1840.

A. T. CARUTHERS, *Clk.*

On Friday, June 5th, 1840, judgment was rendered in the words and figures following, to wit:

JOHN McNEIL
vs. } Debt.
DANIEL McNEIL.

This day came the parties by his attorney, and the defendant made default. It is therefore considered by the court, that the plaintiff recover of the defendant seven thousand dollars, the debt in the declaration mentioned; also two hundred and twenty-five dollars fifty-four cents damages for the detention of said debt, and the costs in this behalf expended.

On the 30th day of July, 1840, an execution was issued in the words and figures following, to wit:

The State of Mississippi, to the sheriff of Marshall county, greeting:

We command you that of the goods and chattels, lands and tenements, of Daniel McNeil, late of your county, you cause to be made the sum of seven thousand dollars, which John McNeil, lately in our circuit court for the county of Marshall, hath recovered against him for debt, also the sum of two hundred and twenty-five and $\frac{54}{100}$ dollars, which to the said John McNeil, in the same court, were adjudged for his damages by reason of the detention of said debt; which interest on said sums, at eight per centum per annum, from the 5th day of June, 1840, until paid, also the sum of twelve and $\frac{25}{100}$ dollars, for his costs by him about his suit in that behalf expended, whereof the said Daniel McNeil is convicted, as appears to us of record; and that you have the said moneys before the judge of said court at the court-house in Holly Springs,

on the first Monday after the fourth Monday in November next, to render to the said John McNeil for his debt, damages, and costs aforesaid, and have you then and there this writ.

Witness the hon. Frederick W. Huling, presiding judge in the 8th judicial district of the State of Mississippi, the first Monday after the fourth Monday in November, 1840, the 64th year of American independence, and seal of said court. Issued the 30th day of July, 1840.

[L. S.]

Test. A. T. CARUTHERS, *Clerk.*

Bill of costs. Judgment June 5th, 1840.

Debt - - - - - - -	$7,000 00	
Damages - - - - - - -	225 54	
		$7,225 54
Clerk cost - - - - - -	7 00	
Jury tax - - - - - - -	3 00	
Sheriff fees - - - - - -	2 25	
		12 25
		$7,237 79

A copy of cost. Test.

A. T. CARUTHERS, *Clk.*

Sheriff return in the words and figures, to wit:

Came to hand same day issued. The within named defendant hath no goods nor chattels, lands nor tenements, whereof I can make the within named sum of money or any part thereof.

Nov. 30, 1840.

LEVI McCROSKY, *Sheriff*,
By A. C. McEWEN, *Dep.*

Execution in the words and figures, to wit:

The State of Mississippi, to the sheriff of Marshall county, greeting:

We command you that of the goods and chattels, lands and tenements, of Daniel McNeil, late of your county, you cause to be made the sum of seven thousand dollars, which John McNeil, lately in our circuit court for the county of Marshall, hath recovered against him for debt; also the sum of two hundred and twenty-five and $\frac{54}{100}$ dollars, which to the said John McNeil in the same court were adjudged for his damages by reason of the detention of said debt, with interest on said sums at eight per centum per annum, the 5th day of June, 1840, until paid; also the sum of fourteen dollars for his costs by him about his suit in that behalf expended, whereof the said Daniel McNeil is convicted, as appears to us of record, and that you have the said moneys before the judge of said court, at the court-house, in Holly Springs, on the first Monday after the fourth Monday in November next, to render

to the said John McNeil, is for his debt, damages, and costs aforesaid; and have you then and there this writ.

Witness the honorable Frederick W. Hulings, presiding judge in the eighth judicial district of the State of Mississippi, the first Monday after the fourth Monday in May, 1841, the 65th year of American independence, and seal of said court.

Issued the 26th day of November, 1841.

Test: A. T. CARUTHERS, *Clerk.*

Bill of costs.

Debt 7,000 00, damages 225 54 - - -		$7,225 54
Clerk's cost - 8 25		
Jury tax - 3 00		
Sheriff's cost - 2 75		
		14 00
		$7,239 54

A copy of costs. Test:

A. T. CARUTHERS, *Clerk.*

Came to hand the 26th day of November, 1841, and levied the same day on one negro woman Queen, one negro woman Charlotte, one negro girl Mary, one negro boy George, one negro girl Malinda, as the property of Daniel McNeil.

WYATT EPPES, *Sheriff,*
By WM. WRIGHT, *D. Sheriff.*

Proceedings stayed by bill of injunction, which came to my hand the 27th of November, 1841, and was obeyed accordingly.

W. EPPES, *Sheriff.*

We acknowledge that Wyatt Eppes, sheriff of Marshall county, has notified us that the property levied on is claimed adversely, and that he claims a bond of indemnity as sheriff.

TOTTON & GREER,
Attorneys.

Bill of injunction.

The STATE OF MISSISSIPPI,
District court of chancery of the State of Mississippi.

To the sheriff of Marshall county, to Hooper, Martin and Smith, Odenheimer and Tennant, John McNeil, James Ferrell, James Cunningham, Hamilton Thornton, Daniel McNeil, their agents and attorneys, greeting:

Whereas it hath been represented to us, in our district court of chancery, on the part of Mariah A. Craft, complainant, that she has lately exhibited her bill of complaint against you, Daniel McNeill et al., de-

fendant, to be relieved touching the matters in said bill contained. We, therefore, in consideration of the premises, and of the allegations in said bill contained, strictly *enjoined* and command you, the said sheriff, and the said Hooper, Martin & Smith, Odenheimer & Tennant, John McNeill, James Ferrell, Jas. Cunningham, Hamilton Thornton, and Daniel McNeill, under the penalty of four thousand dollars, to be levied of your goods and chattels, lands and tenements, to our use, that you absolutely refrain from selling or in anywise disturbing the said Mariah A. Craft in the possession of the following negro slaves, to wit, Queen, one named Charlotte, Mary, Malinda, George, and from any further proceedings against the said complainant, touching any of the matters in said bill contained, until our said court shall make another order to the contrary.

Witness the honorable James M. Howry, judge of the eighth judicial district of the State of Mississippi, the first Monday in July, in the year of our Lord one thousand eight hundred and forty-two, and of the sovereignty and independence of the United States of America the 66th, and seal of our said circuit court of Marshall county. Issued the 30th day of July, 1842.

To the sheriff of Marshall county. Test:

A. T. CARUTHERS,
Clerk of the circuit court of Marshall county.

Came to hand the same day. Issued and obeyed accordingly, by

WYATT EPPES, *Sheriff*,
By WM. WRIGHT, *D. Sheriff*.

Decree.

The STATE OF MISSISSIPPI,

District chancery court of the State of Mississippi, at Holly Springs, July term, 1842.

MARIAH A. CRAFT, complainant,
vs.
DANIEL McNEILL, John H. Harper, George H. Martin, Newberry A. Smith, John McNeill, John N. Odenhamer, James Tennant, James Ferrell, Hamilton Thornton, and John P. Caruthers. } 311.

On this day, being 9th July, 1842, came on the aforesaid cause for hearing before A. B. Lane, special chancellor by consent of parties, upon the bill and demurrer, and the matters of law arising out of the demurrer to complainant's bill being agreed and understood by the court, it seems here to the court that said demurrer is good and void in law, and that said bill is multifarious and *the* sufficient in law to com-

pel the said defendants to answer the same. It is therefore ordered, adjudged, and decreed, that said bill of complainant be dismissed, and that complainant pay the costs of this suit, and that execution issue therefor as in cases at law.

JAS. W. CHALMERS.

9th July, 1842.

I, James C. Alderson, clerk of the district chancery court of the State of Mississippi, at Holly Springs, hereby certify, that the foregoing is a true and of the original decree in the case therein named, on file in my office.

Given under my hand and private seal, there being no seal of said court provided, 9th July, 1842.

[L. S.]

J. C. ALDERSON, *Clerk.*

Execution.

STATE OF MISSISSIPPI, *ss.*

To the sheriff of Marshall county, greeting:

We command you, that you expose to sale those goods and chattels, lands and tenements, of Daniel McNeil, to wit, one negro woman named Queen, one named Charlotte, one girl named Mary, one named Malinda, and one boy named George, to the value of seven thousand two hundred and forty-two $\frac{29}{100}$ dollars, which according to our command you have taken, and which remain in your hands unsold, as you have certified to our judge of our circuit court of Marshall county, to satisfy John McNeil the sum of 7,242 $\frac{29}{100}$ dollars, whereof in our said court he recovered execution against the said Daniel McNeil, by virtue of a judgment in the said court for debt, damages, and costs, with interest on $7,225 54 thereof, from the 5th day of June, 1840, until paid. And that you have the said moneys before the judge of our said court, at the court-house in Holly Springs, on the first Monday of September next, to render to the said John McNeil for his debt, damages, and costs aforesaid; and have you then and there this writ.

JAS. M. HOWERY,
Presiding judge in the eighth judicial district of the State of Mississippi.

The first Monday of March, 1842, and the 66th year of American independence, and seal of said court, issued the 9th day of July, 1842.

[L. S.]

Test:

A. T. CARUTHERS, *Clerk.*

Bill of costs.

Judgment June 5th, 1840.

Debt - - - - - -	$7,000 00	
Damages - - - - -	225 54	
		7,225 54

Clerk's cost - - - - -	9 00	
Jury tax - - - - -	3 00	
Sheriff's cost - - - - -	4 75	
		16 75
A copy of costs - - - - -		$7,242 29

Test: A. A. CARUTHERS, *Clerk*.

Sheriff's return.

Came to hand the 9th July, 1842, the proceedings stayed by bill of injunction, which came to hand the 30th day of July, 1842, by which the sheriff was required to restore to the possession of the complainant, Mariah Craft, the within described negroes, by her entering into bond and security, payable to the sheriff in double the value of said property, and which bond was executed and is returned, with venditioni exponas, No. 3,492.

WYATT EPPES, *Sheriff*.
By WM. WRIGHT, *D'y Sh'ff*.

Dissolution.

District chancery court, of the State of Mississippi, at Holly Springs, January term, 1843, January 10th, 1843.

MARIAH A. CRAFT, complainant,
vs.
DANIEL MCNEIL, John H. Hooper, George H. Martin, Newberry A. Smith, John W. Odenhamer, James Tenant, John McNeil, James Ferrell, James Cunningham, Hamilton Thornton, defendants. } 354.

The vice chancellor being incompetent to sit in this cause, Wm. F. Stearns, a member of the bar in attendance on the court, was selected by the parties by their consent to hear and determine the same, and therefore the vice chancellor retired for the time from the bench, and the said Wm. F. Stearns took his place, and thereupon the cause being submitted on the motion to dissolve the injunction upon bill and answer, and the court having sufficiently considered of the same, doth order that the said motion be allowed, and the injunction granted in this cause dissolved.

I, James C. Alderson, clerk of said court, hereby certify that the foregoing is a true copy from the minutes.

Given under my hand and private seal, there being no seal of said court provided, this 14th day of January, 1843.

[L. S.]

JAMES C. ALDERSON, *Clerk*.

Execution.

The State of Mississippi to the sheriff of county, greeting:

We command you, that you expose to sale those goods and chattels, lands and tenements, of Daniel McNeil, to wit, one negro woman Queen, and negro woman Charlotte, one negro girl Mary, one boy George, and girl Malinda, to the value of seven thousand two hundred and fifty-four $\frac{54}{100}$ dollars which, according to our command, you have taken, and which remain in your hands unsold, as you have certified to our judge of our circuit of Marshall county, to satisfy John McNeil the sum of 7,244 54 dollars, whereof in our said court he recovered execution against the said Daniel McNeil, by virtue of a judgment in the said court for debt, damages, and costs, with interest on $7,225 $\frac{54}{100}$ thereof from the 5th day of June, 1840, until paid; and that you have the said moneys before the judge of our said court, at the court house in Holly Springs, on the first Monday of March next, to render to the said John McNeil for his debt, damages, and costs aforesaid; and have you then and there this writ.

Witness the honorable James M. Howry, presiding judge in the eighth judicial district of the State of Mississippi, the first Monday of September, 1840, and the 67th year of American independence, and seal of said court. Issued the 16th day of January, 1843.

Test: A. T. CARUTHERS, *Clerk*.

Original.

Judgment June 5th, 1840.

Debt		$7,000 00
Interest till forfeiture of bond		225 54
Judgment on bond		7,225 54
Clerk's cost	10 75	
Jury tax	3 00	
Sheriff's cost	4 25	
		19 00
		$7,244 54

Came to hand 16th of January, 1843. Proceedings stayed by supercedeas as to Charlotte and Mary, which came to my hands 26th of January, 1843, and was obeyed accordingly.

W. EPPES, *Sheriff*.

The woman, Queen, and her three children, was claimed by Catharine R. Craft, who filed her affidavit and entered into bond with Wm. Watt and Licurgus Page as security for a trial of the right of property agreeable to law.

W. EPPES, *Sheriff*.

Execution.

The State of Mississippi to the sheriff of Marshall county, greeting:

We command you, that of the goods and chattels, lands and tenements, of Daniel McNeil, late of your county, you cause to be made the sum of seven thousand dollars, which John McNeil, lately in our circuit court, for the county of Marshall, hath recovered against him for debt, also the sum of two hundred and twenty-five $\frac{54}{100}$ dollars, which to the said John McNeil in the same court were adjudged for his damages by reason of the detention of said debt, with interest on said sums at 8 per centum per annum from the 5th day of June 1840, until paid; also the sum of twenty-one $\frac{75}{100}$ dollars, for his costs by him about his suit in that behalf expended, whereof the said Daniel McNeil is convicted as appears to us of record; and that you have the said moneys before the judge of said court, at the court-house in Holly Springs, on the first Monday of March next, to render the said John McNeil for his debt, damages, and costs aforesaid; and have you then and there this writ.

Witness the honorable James M. Howery, presiding judge in the eighth judicial district of the State of Mississippi, the first Monday of September, 1843, and the 68th year of American independence, and seal of said court.

Issued the 26th day of October, 1843.

Test: A. T. CARUTHERS, *Clerk.*

Judgment June 5th, 1840.

Debt - - - -	$7,000 00	
Damages - - - -	225 54	
Clerk cost - - - -	14 00	
Jury tax - - - -	3 00	
Sheriff's cost - - - -	4 75	
A copy of cost.		$7,247 29

Test: A. T. CARUTHERS, *Clerk.*

Came to hand 26th of October, 1843.

Levied on one negro woman by the name of Queen, and her two children, the 26th of October, 1844.

W. EPPES, *Sheriff.*

The above named negroes was advertised, and was sold at the court-house in the town of Holly Springs, on the 4th day of March, 1844, and was struck off to H. Thornton, at six hundred dollars, he being the last bidder for the same; and as there is other executions in my hands that claims the proceeds of the sale, I ask the court to make the application of the same.

W. EPPES, *Sheriff.*

The proceeds of the above sale was applied to fi. fa., No. 1231, of older date of judgment than this, by order of court, the 15th of Sept., 1845.

W. EPPES, *Sheriff.*

Which judgment was sold for cost, and bought by said D. McNeill, which order of sail is not copied in this transcript.

A. T. CARUTHERS, *Clerk*.

THE STATE OF MISSISSIPPI,
Marshall county.

I, Alexander T. Caruthers, clerk of the circuit court of the county of Marshall, and State of Mississippi, do hereby certify, that the foregoing eleven pages contain a full, true, and perfect transcript of the record in the case of John McNeill vs. Daniel McNeill, as appears of record now on file in my office.

Given under my hand and the seal of our circuit court, at office in the town of Holly Springs, the 12th day of May, A. D. 1847.

Test: A. T. CARUTHERS, *Clerk*.

THE STATE OF MISSISSIPPI.

I, Hugh R. Miller, judge of the seventh judicial district in said State, do hereby certify, that Alexander T. Caruthers, whose signature appears to the foregoing attestation, now is, and was at the time of signing the same, clerk of the circuit court in and for the county of Marshall, in said seventh judicial district, and that full faith and credit is due and ought to be given to his official acts as such, and that his said attestation is in due form of law.

Given under my hand and seal, this 12th day of May, ——— 1847.

HUGH R. MILLER. [SEAL.]

Depositions.

Be it remembered, that on the 8th day of May, one thousand eight hundred and forty-seven, at Holly Springs, in the county of Marshall, State of Mississippi, Malcom Smith personally appeared before me, Alexander M. Clayton, one of the judges of the high court of error and appeal, in and for the State of Mississippi, and made oath, that he, the said Malcom Smith, is one of the defendants in a suit then depending in the district court of the United States for the district of the State of Alabama, the court sitting at Tuscaloosa, wherein Daniel McNeill is complainant, and the executors of John McNeill, deceased, are defendants; that the testimony of John Brown, Hamilton Thornton, James Cunningham, James L. Totton, and David Lawing, at present of the county of Marshall, State of Mississippi, are material and necessary for this deponent, and his co-defendant in the defence of such cause; and that the said John Brown, Hamilton Thornton, James Cunningham, James L. Totton, and David Lawing, live in the county of Marshall, State of Mississippi, more than one hundred miles from Tuscaloosa, State of Alabama, where the court at which this deponent expects the said cause will be tried, *as* appointed by law to be held; and that the said Daniel McNeill, the above named complainant, as he is informed and believes, resides in the county of

Marshall, State of Mississippi, about six miles distant from Holly Springs, the place where the examination of the said witnesses is expected to be taken; and the said Malcom Smith, as he is informed and believes, that Peck and Clark, the attorneys for said Daniel McNeill, reside at Tuscaloosa, in the State of Alabama, about two hundred miles from Holly Springs, as aforesaid, and the said Malcom Smith requested me, the said Alexander M. Clayton, judge of the high court of errors and appeals of the State of Mississippi, the said John Brown, Hamilton Thornton, James Cunningham, James L. Totton, and David Lawring, might be examined according to the directions of the act of Congress in such cases made and provided.

Whereupon I, Alexander M. Clayton, judge, &c., as aforesaid, have ordered the said John Brown, Hamilton Thornton, James Cunningham, and James L. Totton, and David Lawring, should be examined de bene esse before me or some other person legally authorized, at the court-house in the town of Holly Springs, in the county of Marshall, State of Mississippi, on the 11th day of May, 1847, commencing at 10 o'clock in the forenoon, and continuing from day to day till all of said depositions are taken and ended, and that one day's notice should be given to the said complainant, Daniel McNeill, of such examination, to the end that he might, if he should see fit, be present at the examination, and put interrogatories. And I, Tryon M. Yancy, judge of the probate court for the county of Marshall, State of Mississippi, having satisfactory proof that such notice had been given, the said complainant, Daniel McNeill, as [well as] Malcom Smith, one of the said defendants, appeared before [me] at Holly Springs, State of Mississippi, on the 11th day of May, 1847. I have, therefore, proceeded with the said examination; and the said John Brown, Hamilton Thornton, James Cunningham, and James L. Totton, being carefully examined and cautioned, and duly sworn, to testify the whole truth, and nothing but the truth, and they, the said witnesses, saith as follows:

Question 1st by defendants, to John Brown.

Are you acquainted with the parties to this suit?

Ans. I am acquainted with Daniel McNeill, complainant, and Malcom Smith, one of the defendants.

Question 2d by same. Has or not your deposition been taken by complainant, Daniel McNeill, in the above mentioned cause?

Ans. It has been taken by complainant.

Question 3d by same. Where did John McNeill, the defendants' testator, reside in the first part of the year 1840, and where in March, 1841?

Ans. I don't know of my own knowledge.

Question 4th by same. What did you state in your deposition taken by complainant, in relation to L. B. Revels returning from the residence of John McNeill in Alabama, about the 15th March, 1841?

Ans. I stated that I saw a letter which Revels brought with him from Alabama, purporting to be from John McNeill, directed to Daniel McNeill, in which letter John McNeill says, Mr. Revels arrived at my

house a few days since with some of your negroes and horses, what number is not now recollected.

Question 5th by same. How did you know that said Revels on that occasion returned from the residence of said John McNeill in Alabama, and how did you know that the said Revel brought the said letter from John McNeill in Alabama?

Ans. I know nothing of it of my own knowledge; Revels said he came from John McNeill's in Alabama; and I saw the letter which Revels said he brought from Alabama, and it was directed to Daniel McNeill, per Mr. Revels.

Question 6th by same. Did you ever see John McNeill write; are you or not acquainted with John McNeill's signature or handwriting?

Ans. I never saw him write; and I am not acquainted [with] his handwriting or signature.

Question 7th by same. How far did said Daniel McNeill reside from the mill you took charge of, on or about the 15th of March, 1841, and for some time after?

Ans. He resided at that time in Holly Springs, about five or six miles from the mill, and for some time after the 15th March, 1841.

Question 8th by same. How happened it that the letter which you have stated was brought, or purported to be brought, by Revel from John McNeill to Daniel McNeill, was left at said mill?

Ans. It was left there by Daniel McNeill, among other papers belonging to said McNeill.

Question 9th by same. How do you know that said Revels arrived at the house of said John McNeill with the negroes and horses?

Ans. I know nothing of it of my own knowledge, only that Revels and the letter both stated the same.

Question 10th. What was the pecuniary situation of Daniel McNeill about the time he made the bill of sale of negroes to John McNeill; was he pressed with executions? If so, how many, and for what amount; was he sued; if yea, how many suits were pending against him; and for what amount? Please state fully all you may know touching this inquiry?

Ans. I don't know that there was a bill of sale from Daniel McNeill to John McNeill for the negroes spoken of in the question; about March, 1841, he was very hard pressed for money; I believe he was in debt, and his liabilities were more than he had means to satisfy; I don't know any thing about his being pressed with executions at that time; he was sued, but how many suits, and to what amount, I do not know.

Question 1st by complainant, (cross examination.) Do you know of your own knowledge the amount of McNeill's indebtedness, or the extent and value of his property at the time above alluded to?

Ans. I do not know; I was about as ignorant of his liabilities as I was of his property.

Question 2d by same. Was he not at that time possessed of a large

property and goods, which, as such property then rated, [was] more than amply sufficient to pay every debt that you know against him?

Ans. I was not sufficiently acquainted with his property or liabilities to know.

JOHN BROWN.

Sworn to and subscribed before me, 11th May, 1847.

T. M. YANCY, *Com.*

David Lawing subpœna returned not found.

Hamilton Thornton's deposition.

Has or not your deposition been taken heretofore by the complainant in this cause?

Ans. It has.

Question 2nd by same. Please describe the fourteen negroes which John McNeill took with him to Alabama, their ages, sex, names, and value of each, separately.

Ans. As well as I can recollect, they were of the following names, ages, and sexes, to wit, Rial, a man about 40 or 45 years old, value $700; Jim, a man about the same age, value $700; Stokes, a man 24 or 25 years old, value $800; Bill, a boy about 18 years old, value $900; Laurissa, about 25 or 26 years old, value $600; her two children, Moses, about 4 or 5 years old, value $300; Wash, about 18 months old, value $150; Harriet, about 26 or 28 years old, value 750; Bill, about 8 years old, value $450; Frances, about 10 or 11 years old, value $400; Fanny, about 18 years old, value $700; her child, an infant, $100; Betty, 35 years old, value $600; Becky, 13 years old, value $600.

Question 3d by same. State also the value of the wagon, and each mule separately. Would said wagon and mules have sold then, in Marshall county, Mississippi, for eight hundred dollars?

Ans. I think the wagon and harness were worth one hundred and fifty dollars; the mules were fine mules, and were worth $150 each; I think they would have sold for $750, and might have been sold for $800 or less.

Question 4th by same. State the annual value of the hire of each of said fourteen negroes by name.

Answer. Rial, value $150 per year; Jim, the same; Stokes, same; Bill, same; Laurissa, with two children, Moses and Wash, $75; Harriet, $130; boy Bill, $25; Frances, $36; Fanny and child, $65; Betty, $65; Becky, $65.

Question 5th by same. How do you know that Daniel McNeill subsequently [sent] eleven other negroes to John McNeill by L. B. Revils?

Answer. I do not know, of my own knowledge, that he did send any negroes by Revils.

Question 6th. Please describe the said eleven negroes by name, their ages, sex, and separate value of each.

Answer. I did not know them well enough to do it.

Question 7th. State the annual value of the hire of each [of] said eleven negroes.

Answer. I do not know the negroes well enough to estimate their annual hire.

Question 8th by same. You state, in your deposition aforesaid, taken by complainant, your understanding as to the object of the loan of money by John McNeill to complainant. How did you get your understanding? Did you hear John McNeill and Daniel McNeill in conversation upon the subject? If so, state, as well as you can recollect, the words spoken between them.

Answer. I got it from John McNeill and Daniel McNeill, while talking together at divers times. John McNeill told Daniel McNeill that he would advance him about seven thousand dollars, for the purpose of releasing three sections of land, sold by Daniel McNeill to James M. Boyd, which was bound by judgment then against Daniel McNeill. John McNeill told Daniel McNeill that he would take the negroes to Alabama, where they could make more than they could here, and that he should have all that they made; and when the debt was paid, or he got his money back, he, Daniel McNeill, should have the negroes. And he, the said John McNeill, said he would advance twenty thousand dollars, before the trade between James M. Boyd and Daniel McNeill should fail to be carried out.

Question 9th by same. For what purpose did John McNeill take said fourteen negroes to Alabama? Did you hear them in conversation on the subject? If so, state the words, as near as your recollection will enable you, what passed between them.

Answer. He said he would take them as security for the seven thousand dollars advanced to Daniel McNeill. I heard them in conversation on that subject. The latter part of this question is answered in the preceding question.

Question 10th. How often did you see said parties together, whilst they were transacting the business aforesaid?

Answer. I could not state the precise number of times, but was with them almost all the time, every day whilst John McNeill was in this country.

Question 11th by same. How did you acquire your information as to the trade for the Paul C. Reed tract of land, and that negroes were paid for said land; and what negroes paid? And how do you know that complainant paid four hundred dollars on said trade? Were you present at such times?

Answer. I know nothing of the transaction of my own knowledge.

Question 12th. What was the pecuniary situation of Daniel McNeill, about the time said fourteen negroes *was* sent off, in January, 1840, and in March, 1841? Was he pressed with executions? If so, how many, and for what amount? Was he sued about that time? If yea, how many suits were pending against him, and for what amount? State fully all you know in reference to this question.

Answer. I know nothing of what debts were against him at that time of my own knowledge, but understood there was four thousand dollars, which was a lien on the land sold to Boyd. As to the amount of his liabilities at that time, I know nothing of my own knowledge. As to executions, I do not know whether he was pressed or not, or to what amount. As to suits, I have seen suits upon the record, but cannot tell as to the amount.

Question 13th. Did said last lot of eleven negroes leave in the night or day; and what was the manner in which they left?

Answer. I do not know when, or the manner in which they left.

Question 14th. Were the two lots of negroes, or either of them, sent off to avoid being taken for complainant's debts, or otherwise?

Answer. I have heretofore stated what the lot of fourteen was taken off for; as to the lot of eleven, I do not know what it was taken off for.

Question 1st by complainant (on cross examination). Do you or not know of whom Daniel McNeill purchased Rial, Jim, Harriet, and Becky, referred to by you as a portion of fourteen negroes first carried to Alabama by John McNeill? And if yea, say of whom.

Answer. I learned of Paul C. Reed and Daniel McNeill, that Daniel McNeill got the negroes of Paul C. Reed.

Question 2d by same. After the negroes were carried to Alabama by John McNeill, do you or do you not know of Daniel McNeill having sold them back to Paul C. Reed, and for what, and by and between whom? Was the trade between Daniel McNeill and Paul C. Reed consummated?

Answer. I learned from Paul C. Reed and Daniel McNeill, that he, Reed, and Daniel McNeill made a trade in relation to a tract of land known as the Paul C. Reed place; and that the four negroes, to wit, Rial, Jim, Harriet, and Becky, referred to as a portion of the fourteen, was taken by Reed in payment for said land, provided he could get a bill of sale from John McNeill for them; and he, said Daniel McNeill, and Paul C. Reed started to Alabama for that purpose; and on their return to this country I saw some of said negroes in said Paul C. Reed's possession. I have also seen a paper, purporting to be a deed for said land, made to John McNeill by Paul C. Reed, in the possession of Daniel McNeill.

H. THORNTON.

To all of the question and answer No. 2d, above stated, the defendants, by their counsel, object as illegal. And complainant objects to the examination of witness Thornton, made by defendants, in toto.

Deposition of James Cunningham.

Question 1st by defendants. Do you now reside in the county of Marshall, State of Mississippi; and has not your deposition been heretofore taken in this cause by complainant?

Answer. I now reside in Marshall county, Mississippi; and that my deposition has been heretofore taken by complainant.

Question 2d by defendant. In what manner did the fourteen negroes,

taken from this to the State of Alabama, of which you spoke of in your aforesaid deposition, leave the State of Mississippi? Did they leave in the day or night?

Ans. Some of them were in the wagon, some were walking, and one was driving the team; they left about ten o'clock in the day.

Question 3d by same. Why did you go along when they went off?

Ans. I had no reason for going except to visit my relations in Lauderdale county, North Alabama, where I stopt.

Question 4th by same. Please describe the fourteen negroes which John McNeill took with him to Alabama; their ages, sex, names, and value of each separately.

Ans. Stokes, a number one negro man, aged about 25 or 26 years then, value $800; Rial, aged about 35 or 36 years, value $650; Jim, aged about 40 years, value $650; Harriet, aged about 26 or 27 years, value $650 00; Laurissa, aged 25 years, value $650 00, and two children, Moses, 5 years old, very likely, value $350 00; Wash, aged 12 months, value $125 00; Bill, aged about 18 or 20, very likely yellow boy, value $800 00; Little Bill, aged about 8 years, value $450 00; Frances, aged about 10 years, very likely, value $450 00; Betty, aged about 35 years, value $600 00; Fanny, aged about 17 or 18 years, value $650 00, and her child, not recollected; Becky, aged about 12 or 13 years, value $550 00.

Examination of James L. Totten, in the foregoing case—D. McNeill vs. *Jno. McNeill, executors.*

Question 1st by defendants. Do you or not now reside in the county of Marshall, State of Mississippi; and has or not your deposition been heretofore taken in this cause by the complainant?

Answer. I settled in the county of Marshall, State of Mississippi, in the latter part of the month of December, 1837, and have resided in said county ever since, and still do. My deposition was taken in this cause heretofore by the complainant.

Question 2d. What was the pecuniary condition of Daniel McNeill in January, 1840, and in March, 1841? Please state all you know touching this inquiry.

Answer. I became acquainted with Daniel McNeill some time in the year 1838; the firm of Totten & Greer, attorneys at law, during the latter part of the year 1838, 1839, 1840, and perhaps longer, attended to a considerable amount of law business for Daniel McNeill, and from knowledge thus obtained I believe that the liabilities of Daniel McNeill in January, 1840, were large. He was a member of the firm of O. D. Watson & Co., formerly merchants at Holly Springs, and also was a large trader in lands, negroes, and other property. He, at the same time, had a large amount of property and effects of various kinds. In the latter part of 1839, or early in 1840, he owned three sections of land, on which he then resided, which he sold to one James M. Boyd for twenty-five thousand dollars; the most or all of which was subsequently applied in payment of his debts. So far as related to his con-

dition in March, 1841, I would think, from the knowledge before alluded to, that it was fully ascertained that said McNeill was insolvent, though I do not pretend to say that his means were exhausted. I have knowledge of large liabilities being satisfied since that time, as well as I now remember; nor do I now undertake to say that his means are exhausted.

Question 3d. You state in the conclusion of your last answer, that you have knowledge of large liabilities of said complainant being satisfied since that time: you will please state whether you know or not, that there are large liabilities of the complainant in January, 1840, and in March, 1841, still unsatisfied.

Answer. I know there are some liabilities still existing against said McNeill, which existed in January, 1840, and in March, 1841, but to what amount I am not able to say, as I have not, for some years back, been as familiar with the business of said McNeill as I had previously been.

Question 1st by complainant. Please examine the answer of Hamilton Thornton to defendants' second question in reference to the ages and sexes of the 14 negroes, and give your estimate of the value of said negroes separately, in Marshall county, in 1840.

Answer. The value of negroes, of course, must [at] all times depend on their age, health, appearance, usage which they had received, and also upon the price of the staple which they raise. In the latter part of 1839, or early in 1840, I gave one thousand dollars for a young man, which I regarded as number one fellow. I would not now be willing to take less for him, and I consider that price to have been the value of such fellows in 1840, in the county of Marshall; negroes less valuable I would value at that rate; not having examined the negroes referred to, (though I may have seen them) I am not able to express a definite opinion of their value, as they are not described particularly in the answer to the question referred to; and further this deponent saith not.

JAMES L. TOTTEN.

Published by consent, saving all legal objections, and as to the manner in which the depositions came into court.

W. W. MORRIS,
Sol. for deft's.
E. W. PECK.

Published 1st December, 1847, by consent of the solicitors of the parties.

Teste: A. G. GOOCH, *Cl'k.*

Question 5th by same. State also the value of the wagon, and each mule separately. Would said wagon and mules have sold then, in Marshall county, for eight hundred dollars?

Ans. There was a wagon and a team of mules, but I did not notice them sufficiently to estimate their value.

Question 6th by same. Please state the words spoken by John McNeill, from which you get your understanding as to the object of his taking said negroes home with him, mentioned in your aforesaid deposition.

Ans. The precise words I do not recollect.

Question 7th by same. What was the pecuniary situation of the complainant, Daniel McNeill, about the time said fourteen negroes left the State of Mississippi?

Ans. I do not know now any thing about his pecuniary situation at that time.

Question 8th by same. If you know of your own knowledge of complainant, McNeill, having sent other negroes to Alabama, after the said fourteen were taken off, by whom did he send them; what number; what their names, ages, sexes, and separate value of each?

Ans. I do not know, of my own knowledge, that he sent any others.

Question 1st by complainant. (Cross examination.) State the amount of cash paid by complainant, Daniel McNeill, on the stock of goods then in hand, in his possession the latter part of 1839 or first of 1840; the value of his real estate at the same time, to which you know or believe he had titles; and the value, as near as you can, of his negro property.

Answer. Some time previous to the time alluded to, that the fourteen negroes started to Alabama, McNeill purchased of Prentiss, Chambers & Co., & Cook, between thirty and thirty-three thousand dollars worth of goods, and paid for them in land and negroes; at the time of the purchase, he also purchased two sections of land from Kiuhichey, an Indian, and sold the same to James M. Boyd, with another section, for the sum of twenty-five thousand dollars; he also sold town property in the town of Holly Springs, State of Mississippi, to a considerable amount, the precise amount not recollected.

To question 1st, by complainant, and answer thereto, the defendants by their counsel objects as illegal, and the complainant likewise objects to defendants' testimony in toto.

Question by defendants.

You state in your last answer to complainant's question, that the complainant purchased of Prentiss, Chambers & Co., & Cook, between thirty and thirty-three thousand dollars worth of goods; in what year was the purchase made, and in what year did complainant purchase the sections of land mentioned in your answer; were the purchase of the goods and lands made in 1837, 1838, or 1839?

Answer. Not recollected; and further this deponent saith not.

JAMES CUNNINGHAM.

And I do further certify, that the preceding depositions were reduced to writing by me, except the deposition of James L. Totten, which was reduced to writing by himself in my presence, and the said depositions were signed respectively by the said witnesses, to wit: John Brown,

Hamilton Thornton, James Cunningham, and James L. Totten, in my presence, and that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

Given under my hand and seal this 14th day of May, 1847.

T. M. YANCY, [SEAL.]

Judge of the probate court of Marshall county, State of Mississippi.

District court of the United States, in and for the district of North Mississippi.

DANIEL MCNEILL
vs.
JOHN MCNEILL'S executors.

NORTHERN DISTRICT OF MISSISSIPPI, ss.

Malcom Smith, of Autauga county, in the State of Alabama, being sworn, says that he is one of the defendants in the above entitled cause; that he is advised by his counsel, and verily believes, that the testimony of John Brown, Hamilton Thornton, James Cunningham, and James L. Totton, and David Lewing, at present of the county of Marshall, and State of Mississippi, are material and necessary for this deponent and his co-defendant in the defence of such cause; that the said John Brown, Hamilton Thornton, James Cunningham, and James L. Totton, live in the county of Marshall, State of Mississippi, more than one hundred miles from Tuscaloosa, State of Alabama, where the court at which this deponent expects the said cause will be tried is appointed by law to be held. And this deponent further says, that as he is informed and believes Daniel McNeill, the above named complainant, resides in the county of Marshall, State of Mississippi, about six miles distant from Holly Springs, the place where the examination of the said witnesses is expected to be taken; and that *that*, as he is informed and believes, Peck and Clark, the attorneys of said Daniel McNeill, reside at Tuscaloosa, State of Alabama, about two hundred miles from Holly Springs, Mississippi, as aforesaid.

MALCOM SMITH.

Sworn to and subscribed before me the 8th day of May, A. D. 1847.

ALEX. M. CLAYTON, *Judge, &c.*

District court of the United States, in and for the northern district of Mississippi.

Let John Brown, Hamilton Thornton, James Cunningham and James L. Totton, the witnesses named in the above and foregoing affidavits, be examined de bene esse before me, or some other person legally authorized accordingly, at the court-house in the town of Holly Springs, Marshall county, State of Mississippi, on the 11th day of May, 1847, commencing at 10 o'clock in the forenoon, and continuing from day to day till all of said depositions are taken and ended; and let one day's notice be given to the said complainant, Daniel McNeill.

ALEX. M. CLAYTON, *Judge, &c.*

District court of the United States, in and for the northern district of Mississippi.

DANIEL MCNEILL, complainant,
vs.
JOHN MCNEILL'S executors, defendants.

Sir: You are hereby notified that John Brown, Hamilton Thornton, James Cunningham, and James L. Totton, and David Lewing, will be examined de bene esse before me, or some other person legally authorized, at the court-house, in the town of Holly Springs, Marshall county, State of Mississippi, on the 11th day of May, 1847, commencing at 10 o'clock in the forenoon, and to continue from day to day till completed, as witnesses for the above defendants, according to the act of Congress in such case made and provided; at which time and place you are entitled by law to be present, and to put interrogatories to the said witnesses.

Dated Holly Springs, Mississippi, May 8th, 1847, to Daniel McNeill, the above complainant.

ALEX. M. CLAYTON, *Judge, &c.*

Came to hand the same day, issued and executed on Daniel McNeill, the 8th May, 1847.

JOHN R. McCARROLL, *Sheriff*,
By JOHN BROWN, *D. Sheriff*.

The within named Hamilton Thornton, John Brown, James F. Cunningham, and James L. Totton, were summoned. David Lewing not found in my county, this 11th May, 1847.

J. R. McCARROLL, *Sheriff*.

Filed 1st December, 1847.
Teste: A. G. GOOCH, *Clerk*.

District court.

DANEIL MCNEILL
vs.
JNO. MCNEILL'S ex'rs. } In chancery.

Daniel McNeill, the above named complainant, being duly sworn saith, that the letter referred to in the deposition of John Brown has been lost, mislaid, or destroyed; that he has searched diligently for the same, and is not able to find the same; and that the same was so lost, mislaid, or destroyed before the deposition of the said Brown was taken; and further deponent saith not.

D. McNEILL.

Sworn and subscribed before me, this 2d December, 1847.

A. G. GOOCH, *Clerk*.

I agree that the above affidavit may be read on the hearing to prove

the loss of said letter, as though the said complainant were in court to swear to said loss, saving all legal objections to the competency of complainant to prove said part.

W. W. MORRIS.

Filed 2d December, 1847.

A. G. GOOCH, *Clerk*.

District court of the United States, for the middle district. In chancery at Tuscaloosa, Alabama.

DANIEL MCNEILL
vs.
DANIEL CRAWFORD and Malcom Smith, executors of John McNeill.

Daniel Crawford, being duly sworn, says that he is co-executor of the last will of John McNeill, with Malcom Smith, and co-defendant as such in the above case; that he is advised by his counsel, and verily believes, that the testimony of Japheth McNair and Alexander Smith is material and necessary for the defendants in the above cause; that the said Daniel McNeill lives near Holly Springs, in the State of Mississippi, more than one hundred miles from the town of Tuscaloosa, where the court, in which deponent expects the said cause to be tried, is appointed by law to be held. And that deponent further says, that as he is informed and believes the above named plaintiff resides as above, more than one hundred miles distant from the place where the examination of the said witnesses is expected to be taken; and that, as he is informed and believes, Messrs. Peck and Clark, the solicitors of the said complainant, resides at the town of Tuscaloosa, about one hundred and ten miles from where the examination of said witnesses will take place, or at least E. W. Peck; the said Lincoln Clark having removed from thence to some place unknown to deponent, as deponent is informed and believes.

DAN'L CRAWFORD.

Sworn to and subscribed before me, this 18th day of May, A. D. 1847.

E. POND, *J. C. C. C. C.*

District court of the United States, for the middle district of Alabama.

DANIEL MCNEILL
vs.
DANIEL CRAWFORD and Malcom Smith, executors of John McNeill.

Let Japheth McNair and Alexander Smith, the witnesses named in the above affidavit, be examined de bene esse before me, accordingly, at Rockford, on the 18th day of May, 1847, at 10 o'clock, a. m.

E. POND, *Judge C. C. C. C.*

Be it remembered, that on the 10th day of May, A. D. 1847, at Rockford, Coosa county, Daniel Crawford, a co-defendant in the above cause, personally appeared before me, E. Pond, judge of the county court for Coosa county, in the State of Alabama, and made oath, that he, the said Daniel Crawford, was a co-defendant in a suit then pending in the district court of the United States, for the middle district of Alabama, wherein Daniel McNeill is complainant, and Daniel Crawford and Malcom Smith, executors of John McNeill, were defendants; and that the testimony of Japheth McNair and Alexander Smith was material and necessary for them, the said defendants, in the defence of said suit, and that the said Daniel McNeill lived near Holly Springs, in the State of Mississippi, more than one hundred miles from the town of Tuscaloosa, where the court, in which said cause is pending and would be tried, was appointed by law to be held. And deponent further says, that said complainant, as he is informed and believes, lives more than one hundred miles distant from the place where the examination of the said witnesses is expected to be taken; and that, as he is informed and believes, Messrs. Peck & Clark, the solicitors of the said complainant, reside at the town of Tuscaloosa, about one hundred and ten miles from where the examination of said witnesses will take place, or at least E. W. Peck; the said Lincoln Clark having removed from thence to some place unknown to deponent, as deponent is informed and believes; and the said Daniel Crawford requested me, that the said Japheth McNair and Alexander Smith might be examined according to the directions of the act of Congress in such case made and provided. Whereupon I ordered that the said Japheth McNair and Alexander Smith should be examined de bene esse before me, at Rockford, on the 18th day of May, 1847, at 10 o'clock, a. m.; and the said Japheth McNair and Alexander Smith appearing before me at Rockford, on this the 18th day of May, 1847, I have, therefore, proceeded with the examination. And the said Japheth McNair being carefully examined, and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, doth depose and say, that he knows the defendants in said suit, and has seen the complainant; that he knew a negro woman, named Loracy, claimed by said complainant; said negro was supposed to be worth but little or nothing; that during the year 1843, as witness believes, said Loracy was under the attention of a physician for some six months, and was in a very unhealthy state until her death; witness has no personal knowledge of the death of said negro, but from the report of her physician, and the common report of the family and neighborhood, verily believes that said Loracy died some time in the latter part of 1843; and further, that said negro was of no value by way of hire or otherwise, but an expense to her owner or keeper. Witness further states, that he knew a negro girl about 12 or 15 years old, named Ellen, said to be claimed by complainant; he saw her often for about four years, say from 1841 to 1845; witness considers her worth, at that time, not exceeding $200; said Ellen was under the charge of a physician about four years, and her services during that

1827.

period was of little or no value, but an expense to her owner. Witness lived, during the above period, within a half mile of the residence of the physician who attended on said negro, Ellen.

JAPHETH McNAIR.

Alexander Smith next appeared, and after being cautioned, carefully examined, and duly sworn to testify the truth, and nothing but the truth, doth depose and say, that he knows the parties to this suit, and that he was one of the appraisers appointed by the authority of the orphan's court of Coosa county, Alabama, to value and appraise said estate of John McNeill, deceased, in connexion with others; that he now looks upon a paper, which being a part of the original appraisement, and all that portion of said list of original appraisement having reference to the negroes claimed by Daniel McNeill, the complainant, together with the caption, the names of the negroes so claimed by him, and the prices in figures, except figures to the three last annexed, are in the handwriting of the said Daniel McNeill; the following of which is a true copy of said original paper or appraisement, to wit:

"The following negroes were found in the possession of John McNeill, and were claimed by Daniel McNeill as his property, and being exhibited to us, they were appraised as follows, to wit:

Fanny, and her child, Tennessee	$650
Stokes	650
Rose, and her two children, Demetre and Sandy	600
Essex	500
Bill Johnson	750
Bill Mississippi	450
Moses	300
Washington	150
Ellen	300
Polly	350
Peter Holland	150
Nancy Holland	350
Milly Ann	300
One mare and mule colt	70

Which deponent says is all in his, complainant's, handwriting, except the appraisement figures of the three last named negroes, which figures were made by another. Witness further states, that said complainant was present at the time of appraisement, and it having been intimated to the appraiser that some portion of the property would be or was claimed by said complainant, it was suggested that a distinct list should be made and attached to the general appraisement, in order to designate said property. And the said complainant having the reputation of a lawyer, it was agreed that he should make it out in his own form, which he did, as shown in the above copy, in the presence of witness and the other appraisers. Witness further states, that the complainant was present during the time of appraising the property, and witness has no recollection of ever hearing the complainant make claim to a

wagon, mules, or any other species of property, then and there undergoing an appraisement, other than the property included in the foregoing list. The mare and mule colt, in the above copy of appraisement, was not in the handwriting of said complainant, nor did he claim her in my presence, but were appended to the list by some other person at the suggestion of Malcom Smith.

ALEX. SMITH.

And I do further certify, that the preceding depositions were reduced to writing by me, and signed by the said Japheth McNair and Alexander Smith, and that I am not of counsel or solicitor for either of the parties to said suit, nor am I interested in the event thereof.

Given under my hand this 18th day of May, A. D. 1847.

EBENEZER POND,
Judge county court, Coosa county, Alabama.

Opened by consent, saving all legal exceptions.

E. W. PECK,
W. W. MORRIS.

Published 1st December, 1847, by consent of the solicitors of the parties.

Teste: A. G. GOOCH, *Clerk.*

Filed 1st December, 1847.

Teste: A. G. GOOCH, *Clerk.*

District court of the United States, for the middle district of Alabama.

DANIEL MCNEILL
vs.
DANIEL CRAWFORD and MALCOM SMITH, executors of John McNeill.

In chancery at Tuscaloosa.

Daniel Crawford being duly sworn says, that he is co-executor of the last will of John McNeill, with Malcom Smith, and co-defendant as such in the above suit; that he is advised by his counsel, and verily believes that the testimony of James Goggan, Charles K. Cotton, Simeon McLemore, and Martin Haynie, and Isaac W. Suttle, is material and necessary for the defendants in the defence of the above cause; that the said Daniel McNeill lives near Holly Springs, in the State of Mississippi, more than one hundred miles from the town of Tuscaloosa, where the court in which deponent expects the said cause will be tried is empowered by law to be held, and more than one hundred miles from the residence of said witnesses; and that deponent further says, that, as he is informed and believes, the above named plaintiff resides as above, more than one hundred miles distant from the place where

the examination of the said witnesses is expected to be taken; and that, as he is informed and believes, Messrs. Peck & Clark, the solicitors of the said complainant, resides at the town of Tuscaloosa, or at least E. W. Peck resides there; and that Lincoln Clark has removed to parts unknown to this deponent, which is more than one hundred and ten miles from the residence of said witnesses.

DANIEL CRAWFORD.

Sworn to and subscribed before me this 12th day of May, A. D. 1847. E. POND, *J. C. C. C. C.*

District court of the United States, for the middle district of Alabama.

DANIEL MCNEILL
vs.
DANIEL CRAWFORD [and] Malcom Smith, executors of John McNeill.

Let James Goggan, Charles K. Cotton, Simeon McLemore, and Martin Haynie, the witnesses named in the foregoing affidavit, be examined de bene esse before me accordingly, at Rockford, on the 12th and 13th days of May, A. D. 1847, at 10 o'clock, a. m., on said days.

E. POND, *J. C. C. C. C.*

Be it remembered, that on the 12th day of May, A. D. 1847, at Rockford, Coosa county, Alabama, Daniel Crawford, a co-defendant in the above cause, personally appeared before me, E. Pond, judge of the county court for the county of Coosa, and State of Alabama, and made oath that he, the said Daniel Crawford, was a co-defendant in a suit then pending, in the district court of the United States, for the middle district of Alabama, wherein Daniel McNeill is complainant, and Daniel Crawford and Malcom Smith, executors of John McNeill, was defendants; and that the testimony of James Goggan, Charles K. Cotton, Simeon McLemore, and Martin Haynie, and Isaac W. Suttle, was material and necessary for them, the said defendants, in the defence of said suit, and that the said Daniel McNeill lived near Holly Springs, in the State of Mississippi, more than one hundred miles from the town of Tuscaloosa, where the court in which said cause is pending, and would be tried, was appointed by law to be held; that the said Daniel McNeill resided as aforesaid, more than one hundred miles from Tuscaloosa aforesaid, and one hundred miles from the residence of the witnesses and more. That Messrs. Peck & Clark, the solicitors for said complainant, resided at the town of Tuscaloosa, or at least E. W. Peck resides there, and that Lincoln Clark has removed to parts unknown to deponent, which is more than one hundred and ten miles from the residence of said witness; and the said Daniel Crawford requested me, that the said James Goggans, Charles K. Cotton, Simeon McLemore, and Martin Haynie, and Isaac W. Suttle might be examined according to the directions of the act of Congress in such case made and provided; whereupon, I ordered that the said James Goggans, Charles K. Cotton,

Simeon McLemore, and Martin Haynie, and Isaac W. Suttle should be examined de bene esse before me, accordingly, at Rockford, on the 12th and 13th days of May, A.D. 1847, at 10 o'clock, a. m., on said days. And the said James Goggans appearing before me, at Rockford, on this the 12th day of May, 1847, I have therefore proceeded with the said examination, and the said James Goggans being carefully examined, and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, doth depose and say, that he is acquainted with the parties, Daniel Crawford and Malcom Smith, the defendants, and has seen complainant, Daniel McNeill; that he acted as one of the appraisers of the personal property belonging to the estate of John McNeill, deceased, under the authority of the orphan's court of Coosa county; he has looked on a paper returned to said orphans' court, now submitted to his inspection, and says, he believes it to be a part of the original appraisement returned to the orphan's court aforesaid, and the witness sets forth the following as an examined copy of said original paper, to wit:

"The following negroes were found in the possession of John McNeill, and were claimed by Daniel McNeill as his property, and being exhibited to us, they were appraised as follows, to wit, Fanny and her child, Tennessee, $650; Stokes $650; Rose and her two children, Demetre and Sandy, $650; Essex $500; Bill Johnson $750; Bill Mississippi $450; Moses $300; Washington $150; Ellen $300; Polly $350; Peter Holland $150; Nancy Holland $350; Milly Ann $300. The appraisement of the property of John McNeill was made some time in January, 1844; Daniel McNeill, the complainant, was present when said property was appraised, and wrote out the caption of the general appraisement list; and after an examination of the original, of which the above is a copy, witness believes it is in the same handwriting as the caption of said appraisement.

Said list of property, which is contained in said original, was submitted by the complainant to the appraisers at the time of said appraisement, for the purpose of advising them of the property which he claimed from the estate of John McNeill. The list above spoken of, which Daniel McNeill submitted, containing the caption and names of the negroes claimed, is in his own handwriting. The prices settled on by the appraisers, above set forth, are also in the handwriting of complainant, except Peter, Nancy, and Milly Ann; the prices of them were set down in the handwriting of some of the appraisers. On said original the names of Peter Holland, Nancy Holland, and Milly Ann, have been erased, and the same names, with the prices annexed, are added below, or again written in the handwriting, witness thinks, of some of the appraisers. One mare and mule colt also appears on said original, omitted in the copy above, appraised at $70, which is not in the handwriting of complainant. This item makes said copy complete. The negroes above set forth, and a small one-horse wagon, was all the property claimed from said John McNeill's estate by said complainant, of which affiant has any knowledge. The prices fixed upon the said negroes affiant considers a fair valuation at that time.

There was, at that time, a negro woman, named Keziah, given up to complainant, as witness understood, by all the parties to this suit. Witness further states, that the average price of hire of negro fellows, good field hands, from 1840 to 1847, is about $80 per year. But taking into consideration the women and children, and the infirmities and disease attending the said negroes, affiant considers the sum of $260 a fair price per annum for the lot. This price is fixed as an average price of hire for such negroes in this neighborhood, and that negroes hire for as much in this neighborhood as in any other in the county, as this affiant believes.

JAMES GOGGANS.

Charles K. Cotton, the next witness, being called, appears; and after being cautioned and sworn in the same manner as was James Goggans, says that he knows the defendants in this suit, but is not acquainted with the complainant; that he is acquainted with most of the negroes in controversy in said suit. Fanny, a young woman, under the ordinary size, of about 26 or 27 years of age, has a girl child, named Tennessee, 5 or 6 years of age—worth, at this time, about $500, and the child about $200; Stokes at $600—Stokes is between 35 and 40 years old, from his appearance; Rose appears to be 35 or 40 years old, and has the appearance of an unhealthy woman—worth about $250; Demetre and Sandy affiant knows nothing of; Essex, an ordinary boy about 16 years old, worth about $550; Bill Johnson appears about 30 years old, a tolerable likely boy, but affiant has every reason to believe that said boy is ruptured—worth about $700; Bill Mississippi appears to be about 16 years old, an ordinary boy, and worth about $500; Moses he does not recollect well enough to say any thing, except that he is a small boy that was put up 2 years ago, and no hire could be got for him; Washington affiant states the same thing of; Ellen, a girl *of* about 15 years old, of ordinary appearance, worth about $400; Polly, about such a girl as Ellen, not quite so large nor old, worth about $350; Peter Holland appears to be 60 or 65 years old, has but little use of one arm, worth nothing, but considered an expense to his owner or keeper; Nancy Holland, wife of Peter, about 45 or 50 years old, worth about $100—she is quite puny and weakly, and does but little work; Milly Ann, about 8 years old, worth about $250. Witness has fixed the ages of the above negroes from appearance, and not from his own knowledge. In 1845 Peter Holland and his wife Nancy, and child Milly Ann, were all offered at public hire, and no bid was offered.

There has been but very little variation in the hire of negroes from the year 1840 to 1847; the hiring for 1847 has advanced in the price say 15 to 20 per cent.; the value of negroes have also advanced in [the] same ratio. Witness sets the average hire of Fanny and child at $35 per annum from 1840 to 1847; Stokes and his wife, Rose, Demetre, and Sandy, from the knowledge *I have* of them, he would say their hire is worth $20 per annum, as an average hire as above—I come to this conclusion from the fact that Rose [is] a weakly woman, and

having borne twins which rendered her quite useless for about 2 years; Essex's annual hire would average $30 per annum as above; Bill Johnson's average hire per annum as above is about ($65) sixty-five dollars; the annual hire of Bill Mississippi is set down at $25; affiant further states that Moses and Washington not having been bid off, in 1845, at public hiring, and from his knowledge of their inability to labor, [he] considers their services worth nothing since 1840, but an expense to the owner or keeper; Ellen's hire is averaged at $15 per annum as above; Polly's hire is set down at about $12 per annum as above; Peter Holland, his wife Nancy, and child Milly Ann, worth nothing, but rather an expense. None of the above negroes are mechanics, to the knowledge of witness.

C. K. COTTON.

Martin Haynie, the next witness, being called appears, and cautioned and sworn as were James Goggans and C. K. Cotton, says that he knows the defendants in this suit, and has seen the complainant; that he knows most of the negroes in controversy in said suit; Fanny, a negro woman about 25 years old, affiant considers worth about $550; Tennessee, her child, 5 or 6 years old, about $200; Stokes is about 35 years old, worth $600; Rose, a negro woman, aged 45 years, and very unhealthy, is worth about $300; Demetre, her child, about 7 years old, worth $250; Sandy, also her child, about 5 years old, worth about $200; Emily, also her child, about 3 years old, worth $150; Essex, a boy 15 or 16 years old, worth about $400—this boy is unsound, having a sore leg; Bill Johnson is about 25 years old, worth about $600—unsound, by a rupture, not able to do heavy work; Bill Mississippi, about 15 years old, worth about $450; Moses, about 12 years old, worth about $300; Washington, about 8 or 9 years old, worth $250; Ellen, a girl about 13 or 14 years old, worth $400; Polly, about 12 years old, worth $400; Peter Holland, about 60 years old, worth nothing, owing to his being a cripple and occasionally deranged, but an expense to the owner; Nancy Holland, about 50 years old, worth about $100; Milly Ann, about 11 years old, worth about $300. Affiant fixes the ages of the above negroes from their general appearance, and not from any other source. Affiant further states that Peter Holland and his wife Nancy, and her child Milly, have not been worth any hire since the year 1840, but have been an expense to their owners. Witness fixes the average hire of Fanny and child, Tennessee, at $20 per annum from 1840 to 1847; Stokes, his wife, Rose, and three children, at about $40 per annum as above; Rose, being sickly generally, and 2 years under the attention of a physician; the annual average hire, as above, of Essex is worth about $30; the average annual hire of Bill Johnson, as above, is worth about $75; the average annual hire of Bill Mississippi, as above, is worth about $25; the boys, Moses and Washington, have been an expense from 1840 to this date.

Ellen's average annual hire as above is worth about $15. Polly's average hire per annum to date, about $10. Affiant states that he derives

his information in regard to value of the above negroes, and also of their hire, from the fact of his having had charge of all the negroes in 1844, and 8 of them ever since; and have seen them all often since that date. Affiant further states, that said negroes have been hired at public hire (after duly advertising the same by the executors,) since the year 1844, or so many of them as would command a bid; that negroes hire in his neighborhood at an average price throughout the State, as he knows and verily believes; the negroes Lorsey and Frances, named in complainant's bill, died in the fall of 1843. Witness does not know this fact from his own knowledge, but from the common report of the family and neighborhood in which the negroes died.

Witness further says, that some time in 1845, and this deponent believes in the month of May, in said year, he had a conversation with Daniel McNeill, the complainant, in which conversation said complainant stated that he desired to employ witness to take the negroes to Mississippi, naming the negroes, or a portion of them, as afore valued, but said nothing of any other negroes, nor laid claim to any other. Witness further states, that there *was* several wagons on the place of the late John McNeill which were sold; neither of them bringing of value exceeding $45; and further, that there were several mules on said place, but witness does not know how they came there, nor whether any of them came from the complainant, and states the average value of said mules to be worth about $50.

MARTIN HAYNIE.

Isaac W. Suttle next being called, appears, and after being cautioned and sworn, as were the other witnesses, says that he knows the defendants Daniel Crawford and Malcom Smith, parties to this suit, but has no acquaintance with complainant; that he is the clerk of the orphan's court for Coosa county, Alabama, and that the transcript which he hereunto attaches is a true copy compared with the original upon the records of our said county court. Witness further states that Daniel Crawford and Malcom Smith, executors of John McNeill, deceased, has made reports of the hire of negroes to the orphan's court for said county, for the years 1845, 1846, and 1847; he attaches the following as examined copies of said original reports on file in his office, to wit, for the year 1845, the following report appears: At the time of this sale, the following negroes were hired, to wit:

To M. Haynie, boy Allen	$65 00
" girl Chloe and her 3 children	25 00
" woman Nelly	48 00
To H. C. Laughter, Bill Johnson	67 25
" Fanny and child Tennessee	35 00
To W. W. Mason, Stokes, his wife, and 4 children	25 00
To B. F. Wilson, Essex	30 00
To W. McNeill, boy Bill	20 00
To J. D. Phillips, Moss	5 00

To Mr. Peterson, Ellen	15 00
To B. F. Wilson, Polly	13 00
	$287 25

Peter, wife, and Milly Ann were offered and received no bid.

The above named negroes Allen, Nelly, Cloey and her three children, were received from R. Toombs from Washington, Georgia, as the property of John McNeill; the balance are negroes claimed by Daniel McNeill.

For the year 1846, the following are the entries of hire, to wit:

Col. Mason hired Stokes and family	$40 00
B. W. Wilson, Essex	42 50
J. McKinzie, Mississippi Bill	35 00
Thomas Peterson, Ellen	31 00
W. Jackson, Polly	21 00
James Ramsey, Bill Johnson	81 00
Dickson Spivey, Fanny and child	31 00
Col. Mason, Peter and family	10 00

Moses and Washington offered and received no bid.

For the year 1847, the following are the entries of hire, to wit:

W. W. Mason hired Stokes and family	$90 00
W. D. Jones, Essex	61 00
Thomas H. Furguson, Mississippi Bill	63 00
Jesse Stanly, Ellen	65 00
" Polly	55 00
James Ramsey, Bill Johnson	100 00
John Willis, Fanny and child	82 00
W. W. Mason, Peter and family	26 00
B. F. Cleveland, Mose	32 00

The above negroes are the negroes claimed by Daniel McNeill.

Witness further states that he finds no other entry among the papers belonging to said estate shewing any claim to property belonging to said estate by complainant, other than that set forth in the transcript annexed, marked exhibit A. Witness states that the hire of negroes has varied but little from 1840 up to 1845, since which there has been an advance in the hire of negroes, and in 1847 negroes hired about 50 per cent. higher than in 1845; witness speaks in reference to the value of negro hire in the neighborhood in which the above negroes hired, and in the State generally.

I. W. SUTTLE.

(Copy.)

The following negroes were found in the possession of John McNeill, and were claimed by Daniel McNeill as his property, and being exhibited to us they were appraised as follows, to wit:

Exhibit (A.)

Fanny and her child Tennessee	$650 00
Stokes	650 00
Rose and her two children, Demetre and Sandy	600 00
Essex	500 00
Bill Johnson	750 00
Bill Mississippi	450 00
Moses	300 00
Washington	150 00
Ellen	300 00
One man and mule colt	70 00
Peter	150 00
Nancy	350 00
Milly Ann	300 00
Polly	350 00

THE STATE OF ALABAMA,
Coosa county.

I, Isaac W. Suttle, clerk of the county court for said county, and keeper of the records, hereby certify, that the above or foregoing contains a true copy from the records of the orphan's court of said county, of the list of property appraised as John McNeill's, deceased, and claimed by Daniel McNeill.

Given under my hand and seal of office, at office, this 12th day of May, A. D. 1847.

I. W. SUTTLE,
Clerk county court, C. C.

THE STATE OF ALABAMA,
Coosa county.

I, Ebenezer Pond, judge of the county court for Coosa county, and the presiding judge of said court, do hereby certify, that Isaac W. Suttle, whose genuine signature appears to the annexed and foregoing certificate, is the duly qualified clerk of our said county court; that the same is in due form of law, and that all his official acts as such are entitled to full faith and credit.

Given under my hand and seal, this the 13th day of May, A. D. 1847. EBENEZER POND, [SEAL.]
Judge county court, C. C.

THE STATE OF ALABAMA,
Coosa county.

I, Isaac W. Suttle, clerk of the county court for said county, hereby certify, that Ebenezer Pond, the said presiding judge of said court, whose certificate appears above, is duly commissioned and qualified.

Given under my hand and seal of office, at office, this 13th day of May, A. D. 1847. I. W. SUTTLE,
Clerk county court, C. C.

Simeon McLemore, the next witness, being called, appears, and being cautioned and sworn as were the others witnesses, says, that he knows the parties to this suit; that he knows the negroes in controversy in said suit, [of] which he hereafter speaks; that he has lived since the year 1839, within a mile and a half of the late residence of John McNeill, deceased; that he acted as clerk for the hiring of said negroes in the early part of the year 1845. He states that, in the spring of 1845, the negro boy Bill Johnson was considered to be worth about $600; Fanny, a negro woman, supposed to be about 22 or 23 years of age, was worth in 1845 about $400; Tennessee, her child, was about 4 or 5 years old, and worth about $175; Stokes, about 35 years of age, worth about $400; this negro is considered sound, but rather deformed; Rose, a negro woman, about 40 years old, and considered unhealthy, worth about $150; Demetre, her child, about 5 years old, worth about $225; Sandy, also her child, about 3 years old, worth about $200; Emily, and another infant, (twins,) then about 10 months old, children of Rose, worth $75 each, one of which has died, so says the common report of the family and the neighborhood; Essex, about 10 or 11 years old, worth about $300; this boy is afflicted with a sore leg; Mississippi Bill, aged about 10 or 11 years, worth about $350; Moses, a boy about 6 years of age, worth about $225; Washington, 4 or 5 years old, worth about $200; Ellen, a negro girl, about 12 years old, worth about $350, if sound; Polly, aged about 10 years, worth about $275; Peter Holland, aged about 60 years, of no value, and being a cripple is considered an expense; Nancy Holland, aged about 50 years, worth about $100; Milly Ann, her child, aged about 6 years, worth $200; witness further states, that his calling is a farmer, and that he has made an estimate of the hire of above negroes, taking into consideration their ages, sex, and condition, and puts the same down at an average annual hire in the aggregate at $165 per year, from 1840 to 1845; that there was not much variation in the average hire of negroes from 1840 to 1845, but since the latter date, hire of negroes have advanced 33⅓ per cent. to this date; according to his best estimate, there were several small negroes which were of no value in point of hire previous to 1845, but since, by their growth, have become of value in view of hire; and further this deponent saith not.

SIMEON McLEMORE.

And I do further certify, that the preceding depositions were reduced to writing by me, and signed respectively by the said James Goggans, Charles K. Cotton, Martin Haynie, Isaac W. Suttle, and Simeon McLemore; and that I am not of counsel or solicitor for either of the parties to said suit, nor am I interested in the event thereof.

EBENEZER POND,
Judge of the county court, Coosa county.

Published 1st of December, 1847, by consent of the solicitors for the parties.

Teste: A. G. GOOCH, *Clerk.*

Opened by consent, saving all legal exceptions.

E. W. PECK,
W. W. MORRIS.

Filed 1st December, 1847.
Teste: A. G. GOOCH, *Clerk.*

The United States of America, district court of the United States, for the middle district of Alabama, at Montgomery.

DANIEL MCNEILL, complainant,
vs.
MALCOM SMITH and Daniel Crawford, ex'ors of John McNeill, deceased, defendants. } In chancery.

Be it remembered, that on this 22d day of November, 1848, I have, at the instance of the said Daniel McNeill, the complainant in the above stated case, caused Levi T. Brown, a witness on the part of the said complainant, to come before me, Tryon M. Yancy, judge of the probate court for the county of Marshall, in the State of Mississippi, at my office, in the town of Holly Springs, in said county and State, the same, and the residence of the said witness, being more than one hundred miles from Montgomery, in Alabama, where said suit is now pending; who, being duly sworn, deposeth and saith, that he is about the age of thirty-two years, and resides in the county of Marshall, in the State of Mississippi, at a greater distance than one hundred miles from Montgomery, in the State of Alabama; that he is acquainted with the following negroes, subject of the above suit, to wit: Bill, a yellow boy, aged about twenty-five or thirty, sometimes called Bill Johnson; I consider him a valuable boy of that age, and that his hire is worth as much [as] any boy of that age; also Rial, aged forty or forty-five years, stout and healthy boy, and good wagoner; also Jim, a valuable field hand, aged about forty or forty-five; also Stokes, aged about thirty years, a first-rate wagoner; he knew no better, white or black; he was honest and trustworthy so far as I knew; also Nancy, thirty-five or forty years of age, a common field hand; also Loracey, a large and tall woman, recollection not distinct enough to describe her accurately; also Fanny, aged about sixteen, a valuable girl of that age; also Betty, aged about thirty-five or forty, a good cook; also Harriett, aged about thirty-five, a tall woman, a good cotton picker.

Also appeared before me David A. Cochrane, who being duly sworn, deposeth, and saith, that he knew the following negroes, the subject of controversy in the above suit, to wit: I was acquainted with Bill, a likely young man; also Stokes, who was a good wagoner, and trustworthy; also Essex, was a likely boy; also Mississippi Bill, was a likely boy, and smart and valuable of his age; also Rose, was a good field hand of a woman; also Larrisa, was a large and likely woman, stout and healthy; also Frances, a very smart girl; also Peter Hol-

land, who was a good miller, aged about forty-five years. Said witness says that he is about twenty-three years old, and that his residence is in Marshall county, Mississippi, at a greater distance than one hundred miles from Montgomery, in the State of Alabama; he further states that his knowledge of said negroes is derived from the time that John McNeill carried said negroes to Alabama.

LEVI T. BROWN,
DAVID A. COCHRAN.

Sworn to and subscribed before me, the 22d day of November, 1848.

T. M. YANCY,
Probate judge of Marshall county,
State of Mississippi.

THE STATE OF MISSISSIPPI,
Marshall county.

I, Tryon M. Yancy, judge of the probate court of said county, do hereby certify, that I am not of counsel or attorney to either of the parties, or interested in the event of said cause; I further certify, that the said Malcom Smith and Daniel Crawford have no agent or attorney known to me within one hundred miles of the city of Holly Springs, the place of taking said depositions, nor is the said city of Montgomery within one hundred miles of the same place; and no notice of the taking of this testimony has for that reason been served on the defendants, and that the said testimony was reduced to writing by myself, and by the said witnesses subscribed in my presence.

Given under my hand and seal this 22d day of November, A. D. 1848. T. M. YANCY, *Judge.* [SEAL.]

These depositions published 1st day of December, A. D. 1848, by consent, and in the presence of the solicitors for the parties in the clerk's office.

A. G. GOOCH,
Clerk D. C., middle district, Ala.

Filed 1st December, 1848.
Teste: A. G. GOOCH, *Clerk.*

In a certain cause pending in the circuit court of the United States of America, for the middle district of Alabama, at Tuscaloosa, on the chancery side of said court, wherein Daniel McNeill is complainant, Malcom Smith and Daniel Crawford, executors of John McNeill, are respondents, at the request of the complainant in the said suit above entitled, I have caused Bennett S. Griffin and other witnesses hereinafter named, all of whom reside more than one hundred miles from the city of Tuscaloosa, to come before me, Wm. E. Boisseau, mayor of the city of Wetumpka, at the office of Seth P. Storrs, in the city of Wetumpka, on the 15th day of May, in the year 1848; and the said Bennett S. Griffin, who resides in county of Coosa, having been by me examined, cautioned, and sworn, to testify the whole truth,

did depose and say, and doth depose and say, that he has hired negroes, and has attended many hirings for the last eight years in Coosa county and the neighborhood; that from his knowledge of the average value of negroes hired by the year for the last eight years in Coosa county is, for negro men one hundred and twenty dollars; for negro women eighty dollars; for boys, from 10 to 15 years of age, he cannot give an opinion, not now recollecting particularly their value; negro girls from 10 to 15 years of age, average thirty-five dollars a year; extra good cook at one hundred dollars.

Wagoner at one hundred and fifty dollars.

Blacksmith, ordinary, at two hundred and fifty dollars.

Cross interrogation.

Witness says he refers to a good wagoner, one that takes care of his horses or mules, and can be depended on; he refers to good able bodied negroes, from 22 to 35 years of age; the foregoing answers taken, reduced to writing, sworn to and subscribed before me, May 15th, 1848.

B. S. GRIFFIN,
W. E. BOISSEAU,
M. C. W.

And I have caused Andrew Lyle to come before me, who resides at Wetumpka, in the county of Coosa, and State of Alabama, more than one hundred miles from the city of Tuscaloosa; and the said Andrew Lyle being by me examined, cautioned, and sworn, to testify the whole truth, did depose and say, and doth depose and say, that he is forty-four years of age; has been a resident citizen of Wetumpka fourteen years; has been engaged in the bricklaying business, and in making and laying brick; have been in the habit of hiring negroes every year since he has resided in the county of Coosa; witness says that for the last eight years negro men were worth on an average about one hundred and twenty-five dollars for their annual hire; as common laborers, negro women, common field hands, about ninety dollars a year; negro boys, from 10 to 15 years of age, average about seventy-five dollars; witness states that he has been in the habit hiring such boys, and has paid about the price named; negro girls from 10 to 14 years of age, about fifty dollars; extra good cooks, women, about one hundred and thirty dollars; for wagoner, first rate hand, about one hundred and fifty dollars; for plantation blacksmith, common, two hundred and twenty-five dollars; witness says he has been present at many hirings of negroes, and when women and one or two children are put up to be hired, they bring within about twenty dollars as much as a woman hiring without children in this market; the foregoing estimate of the value of the annual services of negroes is made as a sort of general average for the last eight years; the foregoing answers taken, reduced to writing, sworn to and subscribed before me, May 15th, 1848.

A. LYLE,
W. E. BOISSEAU,
M. C. W.

I have caused James M. N. B. Nix to come before me, who resides at Wetumpka, Coosa county, State of Alabama, more than one hundred miles from the city of Tuscaloosa; and the said Nix being by me examined, cautioned, and sworn, to testify the whole truth, did depose and say, and does depose and say, that he has been a resident citizen of Coosa county about 12 years; is about 34 years of age; witness says he has been in the habit of hiring negroes for the last eight years; has been engaged in the marble business; have had hired by the year as many as ten negro hands at one time; from the knowledge of witness of the annual value of negro men hired by the year in the county of Coosa for the last eight years, witness says the annual hire would be about one hundred and twenty dollars, ordinary hands; for ordinary women about eighty-five dollars a year; negro boys from forty to eighty dollars, making an average of about seventy-five dollars a year; girls from 10 to 14 years of age, average about fifty dollars; extra good cook about one hundred and twenty dollars; for good wagoner one hundred and fifty dollars; common blacksmith two hundred and fifty dollars; witness says, if a negro woman has one child requiring nursing, a deduction should be made of about twenty-five dollars from her annual hire; if two children, from thirty-five to forty dollars; witness in the foregoing answer has made a general average of the value for the last eight years.

Cross interrogation.

Witness refers to first rate negro men; refers to good healthy negro women; the foregoing answers taken, reduced to writing, sworn to and subscribed before me, May 15, 1848.

J. M. N. B. NIX,
W. E. BOISSEAU,
M. C. W.

And Levi Boswell personally came before me, who resides at Wetumpka, in the county of Coosa, more than one hundred miles from the city of Tuscaloosa; and the said Levi Boswell having been by me examined, cautioned, and sworn, to testify the whole truth, did depose and say, and doth depose and say, that he is twenty-eight years of age; has been a resident citizen of Coosa county, and State of Alabama, for about ten years; witness says he has been in the habit of attending at places where negroes were hired at public hiring to the highest bidders; from the best of his opinion, witness says for the last six years, negro men have been worth from eighty to one hundred and ten dollars; and women from sixty to eighty dollars, for annual hire; plough boys and girls from twenty-five to forty-five dollars; good cooks were worth about one hundred dollars; extra good wagoners one hundred and fifty dollars; common blacksmith one hundred and fifty dollars.

Cross interrogation.

Witness says he has never attended hiring at Socapatoy, in Coosa

1936.

county. The foregoing answers taken, reduced to writing, sworn to, answered, and subscribed before me, May 15, 1848.

LEVI G. BOSWELL,
W. E. BOISSEAU, *M. C. W.*

And Francis J. Hatton, a resident citizen of Coosa, says he has, for many years past, acted as auctioneer at the hiring of the negroes of many estates in Coosa and Montgomery counties, and has a good knowledge of the usual and average rates of the value of the hire of negroes for the last eight years, in the county of Coosa and the neighborhood. From the best estimate he can make of the value of the annual hire of negroes in Coosa county and the neighborhood, in the State of Alabama, for the last eight years, he answers, that good negro men were worth, at an average annual hire, one hundred dollars; good first-rate field hands, (women,) eighty dollars; boys, from 10 to 15 years of age, sixty dollars; girls, of similar ages, at forty dollars; extra good cooks, (women,) one hundred and twenty-five dollars; good wagoners, one hundred and fifty dollars; common blacksmith, two hundred and twenty-five dollars; women, with one or two children, if not so young as to require much care or attention, from forty to fifty dollars.

The foregoing answers were given after the said Hatton had been by [me] examined, cautioned, and sworn to testify the whole truth, &c. The foregoing were sworn to, answered, and subscribed, before me, May 15th, 1848.

F. J. HATTON,
W. E. BOISSEAU, *M. C. W.*

And Henry C. Laughter, a citizen of Autauga county, having been by me examined, cautioned, and sworn to testify the whole truth, did depose and say, and doth depose and say, that he has been a citizen of Autauga county about ten years; am well acquainted with the management of negroes and the value of their annual hire. Witness says the negro, Rial, 40 to 45 years of age, very good field hand, tolerable fair wagoner; said negro was in possession of John McNeil the year of 1840–1841, and as much [as] six months of 1842; did not work under the witness. Witness of opinion his annual hire would be worth one hundred and twenty or twenty-five dollars a year for those years.

Defendant, Smith, and his attorney, W. W. Morris, being present, object to the foregoing testimony as illegal and irrelevant, and because said negro is not embraced in the decree of the court, and proceeds to cross examine. Witness does [not] fix the time precisely when said negro was taken from McNeil; thinks it was some time in 1842; the last time he saw said negro, he was in possession of John McNeil; Col. McNeil died about Christmas, 1843.

Witness resided about fifty miles from the residence of McNeil, in Coosa county, where he died; thinks negroes of the age and character of Rial, would hire in Autauga county at about the price stated, during the times mentioned. Was not present in Coosa county when the ne-

groes claimed by Daniel McNeil were brought to the house of John McNeil.

Witness says the man Jim, about the same age of Rial—good man; worked under witness about two years, as well as he recollects; good, large, able-bodied fellow; annual value witness estimates at one hundred and twenty dollars in Autauga county.

Witness says, the negro, Bill Johnson, is a pretty good plantation blacksmith, about twenty-five years of age; his annual value witness estimates at $200 to $225. Came into possession of John McNeil in January or February, 1841; best of his recollection, was in his possession to the time of his death, Christmas, 1843, and has been since in possession [of] Smith and Crawford, executors of John McNeil. Peter Holland is a man about 50 years of age; good plantation hand and sawyer in saw-mill; got crippled in the mill, after about 17 or 18 months' work; got crippled by the sash of the saw falling on his shoulder, and deprived him mostly of the use of his arm thereafter. Dr. Wethers was called to the boy; was of opinion, as he stated, that it would take the boy's life to have his shoulder reset.

The value of his annual hire was about one hundred dollars, until he was crippled.

Stokes, a man about 30 years of age; good, able-bodied hand; a splendid wagoner; his annual value is one hundred and fifty dollars.

Essex, about 14 years of age; good plough boy; worth annually from $80 to $100. Mississippi Bill, about 9 years of age; race rider, worth annually $50 00; never under witness.

Mose, about 7 or 8 years of age; smart boy; don't know his value. Nancy, woman, about 35 or 40 years of age; sound; no incumbrance; worked under witness in 1841, and up to the time of the death of Col. McNeil; her annual worth is $60 00.

Rose, woman, 35 or 40 years of age; had no hindrance; worked under witness in 1841; annual value is $50 00.

Milly Ann, girl, 10 or 12 years of age; toted water and nursed; very smart little girl; annual value don't know.

Larasay, woman, about 35 years old; sick some time, and carried to Coosa; when able to work her annual value would be $75 or $80; she was a fine hand.

Fanny Johnson, young woman, 17 or 18 years old; pretty good cook; smart girl; had one child; only worked under witness one year after J. McNeil's death; got her for a cook; such women would hire for $75 or $80 in Autauga.

Frances, a girl, about 12 years old; can't tell what she would be worth.

Ellen; have seen her; about 12 years of age; don't know her hire.

Polly, same as two last; about 10 or 11 years old.

Betty, have seen two or three times; staid in Coosa all the time; about 40 years old; she was a good cook and house servant; annual value $80 or $90.

Harriett, she worked under witness in 1841; staid, healthy, first rate hand; No. 1 woman; annual value $85 or $90; about 30 years old.

Becky, about 15 years of age; field hand; never saw her work; never heard any complain of her; annual value $60 or $70.

Witness understood from John McNeill that it was the understanding with him and Daniel McNeill, that Bill Johnson was to work in the blacksmith shop; he also said to Daniel McNeill, that most of the hands would work under me, Laughter, (the witness,) in Autauga.

Cross interrogation by W. W. Morris and M. Smith.

Witness says that John McNeil had in his possession at the time of his death blacksmith Bill Johnson, Peter Holland, Stokes, Essex, Nancy Holland, Milly Ann, Fanny, Betty; the answer of witness as to the age of the negroes, give in the direct examination, refers to the year 1841, as to the time at which he fixes their age; witness states that Betty he has seen some two or three times; have understood she was a good cook and house servant; does not of his own knowledge know that she is a good cook and house servant; has never had her under him; Bill Johnson was not a blacksmith when he first came to John McNeill; he says a negro when he learns the trade of a blacksmith, his annual hire would be worth twice as much as a field hand, and his actual value would also be doubled; Bill Johnson stood at the anvil some times to be learning; was never head manager of a shop during the lifetime of Col. John McNeil; worked in the shop during the life of John McNeil 2 or 3 years; his value for these 2 or 3 years was worth $150 a year; the negroes' hire of which the witness testifies, the time of the hire ranges from 1840 to December, 1843; don't particularly know the value of the hire in Coosa county; have seen negroes' hired in Coosa.

The foregoing answers taken, reduced to writing, sworn to, and subscribed before me, May 15th, 1848.

H. C. LAUGHTER.
W. E. BOISSEAU,
M. C. W.

And John Jackson, a citizen of Autauga county, having been by me examined, cautioned, and sworn, to testify the whole truth, did depose and say, and doth depose and say, that he was attending to blacksmith shop and mills of John McNeil, in Autauga county, during the years 1842, 1843; knew the boy Peter Holland; was under the control of witness when he first went there; Peter was attending the saw mill; was a moderately good saw hand; he got crippled in the saw mill; got his shoulder put out of place; witness was present at the time; does not know that any physician was called to the boy; witness says he believes he could have put the negro's shoulder in place; but Mr. Daniel Crawford, the agent of John McNeil, being present, said he did not believe the shoulder was out of place; witness states he believes it was from neglect that the boy's shoulder was ever after disabled; (and W. W. Morris objects to witness' belief;) his annual value $75 or $80 be-

fore crippled; Bill Johnson, when witness first went to McNeil, was at work in the shop, striking for Jim; saw him there also in 1841, in 1842, and 1843; could do fair work in 1843; could shoe a horse, lay a plough. Bill Johnson's annual hire in the years 1842 and 1843 was worth about one hundred and twenty-five dollars for each year.

Cross interrogation.

Peter Holland was taken to the house soon after he was hurt, and witness did not have any further control over him; does not know what occurred then; Peter was not the principal sawyer; it was the latter part of spring or first of summer 1842 that Peter was crippled, and worked no more in the mill.

Answered, sworn to, and subscribed before me, May 15th, 1848.

JOHN JACKSON.
W. E. BOISSEAU,
M. C. W.

And I, William E. Boisseau, mayor of the city of Wetumpka, do hereby certify, that I am not of counsel [or] attorney to either of the said parties, or interested in the event of said cause; I further certify, that the said respondent, Malcom Smith, residing within one hundred miles of Wetumpka, the place of taking the said deposition, I have caused a notice to be served on him of the time and place of taking these depositions, and that said Smith attended in person, accompanied by his attorney, W. W. Morris, esq., and cross interrogated the witnesses when they chose so to do; and that all of said testimony was taken down, sworn to, and subscribed in my presence, on the day and time, and at the place fixed to [take] the depositions of each of the witnesses hereinbefore named.

In testimony whereof I have hereto set my hand, May 15th, 1848.

W. E. BOISSEAU, *M. C. W.*

Published in the clerk's office, this 1st day of December, A. D. 1848, with the consent, and in the presence of the solicitors for the parties.

Attest: A. G. GOOCH, *Clerk*,
D. C. Mid. Dist. of Ala.

Filed 1st December, 1848.
Teste, A. G. GOOCH, *Clerk*.

Circuit court of the United States, for the middle district of Alabama, at Tuscaloosa.

DANIEL MCNEILL,
vs.
MALCOM SMITH, Daniel Crawford, executors of John McNeill, deceased. } In chancery.

Daniel Crawford, one of said defendants being sworn, says that he is a co-defendant in said suit; that he considers and verily believes that

the testimony of James Ramsey and Henry C. Laughter, at present of Autauga county, is material and necessary for defendants in the defence of this cause; that the said James Ramsey and Henry C. Laughter, lives more than one hundred miles from the city of Tuscaloosa, Alabama, where said cause is appointed to be held, and he expects said cause will be tried there; and deponent further says that Daniel McNeil, the complainant, resides at or near Holly Springs, in the State of Mississippi, about 300 miles distant from Montgomery county, the place where the examination of said witnesses is expected to be taken, and about 180 miles from said city of Tuscaloosa; and he is also informed and believes that E. W. Peck, esq., the solicitor of complainant, resides in said city of Tuscaloosa, about one hundred and twenty miles from the aforesaid county of Montgomery.

DANIEL CRAWFORD.

Sworn to and subscribed before me, this 11th day of July, 1848

ADAM C. FELDER, [SEAL.]
Judge C. C. M. C.

Be it remembered that on the 11th day of July, 1848, at Montgomery, Daniel Crawford personally appeared before me, Adam C. Felder, judge county court, Montgomery county, and State of Alabama, and made oath that the said Daniel Crawford is co-defendant in a suit pending in the district court of the United States, for the middle district of Alabama, wherein Daniel McNeil is complainant, and Daniel Crawford and Malcom Smith, executors of John McNeil, is defendant; that the testimony of James Ramsay and Henry C. Laughter, was material for defendant in the defence of this suit, and that said James Ramsey and Henry C. Laughter lives in Autauga county, more than one hundred miles from the city of Tuscaloosa, Alabama, where the court at which he, the said defendant, expected said cause to be tried was appointed by law to be held. That Daniel McNeil, the complainant, resided at or near Holly Springs, in the State of Mississippi, about 300 miles from Montgomery county, and miles from said city of Tuscaloosa; and that E. W. Peck, the solicitor of complainant lives at the said city of Tuscaloosa about one hundred and twenty miles from said county and city of Montgomery.

And the said defendant requested me that the [said] James Ramsey and Henry C. Laughter might be examined according to the act in such case made and provided, whereupon I have proceeded with said examination. The [said] James Ramsey being carefully examined, and cautioned, and duly sworn, to testify the whole truth, and nothing but the truth, saith (as follows in next leaf:)

James Ramsey says "that he knows the parties; that he knows a yellow boy by the name of Bill Johnson; that said boy was claimed by Daniel McNeill, and was said to belong to the estate of John McNeil, deceased; that he hired said boy from Daniel Crawford and Malcom Smith, executors of John McNeil, deceased, for the year 1846 for the price of $80, and for the year 1847 for the price of $100; that said negro was hired at public hiring for him by a friend, and that he sent

his bid of $100, *dollars* for the year 1848, but he did not get the boy; there being no hiring made for that year.

The said boy was in bad health, and was often complaining; that he believes that said boy is worth more now than he was when he hired him, from the fact that he put him at the blacksmith work part of the time he had him, and he improved so as to do tolerable plantation work.

JAMES RAMSEY.

Sworn to and subscribed before me, this 11th day of July, 1848.

ADAM C. FELDER, [SEAL.]
Judge C. C. M. C.

And the said Henry C. Laughter being carefully examined, and cautioned, and duly sworn to testify the whole truth and nothing but the truth, saith (as follows in the next page:)

Henry C. Laughter "says" he knows the parties, and that he attended a public hiring of negroes in Coosa county, in the early part of the spring of 1845, at the late residence of John McNeil; said hiring was had by Daniel Crawford and Malcom Smith, of property said to have been in the possession of John McNeil, a part of which was claimed by Daniel McNeil; that at said hiring he saw hired Mississippi Bill, Essex, girl Ellen, Polly, Stokes and his wife Rose, and children; that he himself hired Bill Johnson for $67.25; Fanny and child for $35; and a boy, named Mose, was hired for five dollars; and he also saw Peter, Nancy, Milly, Ann, and Wash, offered for hire, but no one bidding, they were not hired; he also hired at the same hiring boy Stanley for $65; a young stout No. one field hand; there were a great many persons at said hiring, and a day or two after said hiring, he hired seven negroes, field hands, at private hiring, John Duncan, McDonald, for $350, one of which seven was a good blacksmith; that he did know a girl named Lorissa, that she came down to Autauga in the spring of 1841, and returned in the fall of 1841, or 1842, thinks it was 1842; that while she was down she was confined and lost her child; that after said confinement she was sick two or three months, and after that she was sent to Colonel McNeil's residence in Coosa county; said to have been sent up for Dr. Kelly to attend on her; he also states that Stokes, and Rose and children, went up to Coosa in 1841, and that Rose had been sick, and had not entirely recovered when she left.

H. C. LAUGHTER.

Sworn to and subscribed before me, this 11th day of July, 1848.

ADAM C. FELDER, [SEAL.]
Judge C. C. M. C.

And I do certify that the preceding depositions were reduced to writing by me, and signed by said Henry C. Laughter and James Ramsey; and that I am not counsel or attorney or solicitor for either party to said suit, nor am I interested in the event thereof.

ADAM C. FELDER, [SEAL.]
Judge C. C. M. C.

July 11th, 1848.

Published in the clerk's office this 1st day of December, 1848, with the consent and in presence of the solicitors for the parties.

Teste, A. G. GOOCH,
Clerk D. C., mid. dis. Ala.

Filed 1st December, 1848.
Teste, A. G. GOOCH, *Clerk.*

District court of the United States, for the middle district of Alabama.
In chancery, at Tuscaloosa, Alabama.

DANIEL MCNEILL
versus
DANIEL CRAWFORD and Malcom Smith, ex'rs of John McNeill.

Daniel Crawford, being sworn, says that he is co-executor of the last will of John McNeill with Malcom Smith, and co-defendant as such in the above suit; that he is advised by his counsel, and verily believes, that the testimony of James A. Kelly, Martin Haynie, William Chapman, Samuel Peterson, and Isaac W. Suttle, is material and necessary for the defendants in the defence of the above cause; that the said Daniel McNeill lives near Holly Springs, in the State of Mississippi, more than one hundred miles from the town of Tuscaloosa, where the court, in which deponent expects the said cause will be tried, is appointed by law to be held; and that deponent further says that, as he is informed and believes, *that* the above named plaintiff resides as above, more than one hundred miles distant from the place where the examination of the said witnesses is expected to be taken; and that, as he is informed and believes, Messrs. Peck and Clark, the solicitors of the said complainant, resides at the town of Tuscaloosa, about one hundred and ten miles from the place where the examination of said witnesses is expected to be had.

DANIEL CRAWFORD.

Sworn to and subscribed before me, this 19th day of May, A. D. 1848.
E. POND, *J. C. C. C. C.*

District court of the United States, for the middle district of Alabama.
In chancery, at Tuscaloosa, Alabama.

DANIEL MCNEILL
versus
DANIEL CRAWFORD and Malcom Smith, ex'rs of J. McNeill.

Let James A. Kelly, Martin Haynie, William Chapman, Samuel Peterson, and Isaac W. Suttle, the witnesses named in the foregoing affidavit, be examined de bene esse before me, accordingly, at Rockford, on the 19th day of May, 1848, at 10 o'clock, a. m., of said day.

EBENEZER POND,
Judge county court, C. C. Ala.

Be it remembered, that on the 19th day of May, 1848, at Rockford, Coosa county, Alabama, Daniel Crawford, a co-defendant in the above cause, personally appeared before me, E. Pond, judge of the county court for Coosa county, in the State of Alabama, and made oath that he, the said Daniel Crawford, was a co-defendant in a suit then pending in the district court of the United States, for the middle district of Alabama, wherein Daniel McNeill is complainant, and Daniel Crawford and Malcom Smith, executors of John McNeill, *was* defendants; and that the testimony of James A. Kelly, Martin Haynie, William Chapman, Samuel Peterson, and Isaac W. Suttle, was material and necessary for them, the said defendants, in the defence of said suit; and that the said Daniel McNeill lived near the Holly Springs, in the State of Mississippi, more than one hundred miles from the town of Tuscaloosa, where the court, in which said cause is pending and would be tried, was appointed by law to be held; that the said Daniel McNeill resided as above, more than one hundred miles distant from the place where the examination of the said witnesses is expected to be taken; and that Messrs. Peck & Clark, the solicitors of the said complainant, resided about one hundred and ten miles from the place of such examination of the witnesses as aforesaid; and the said Daniel Crawford requested me that the said James A. Kelly, Martin Haynie, William Chapman, Samuel Peterson, and Isaac W. Suttle, might be examined according to the directions of the act of Congress in such case made and provided; whereupon I ordered that the said James A. Kelly, Martin Haynie, William Chapman, Samuel Peterson, and Isaac W. Suttle, should be examined de bene esse before me, at Rockford, on this the 19th day of May, 1848, at 10 o'clock a. m. of said day; and the said James A. Kelly, Martin Haynie, William Chapman, Samuel Peterson, and Isaac W. Suttle, appearing this the 19th day of May, 1848, I have, therefore, proceeded with the said examination. And the said James A. Kelly being carefully examined, and cautioned, and duly sworn to testify the whole truth and nothing but the truth, doth depose and say, that he is acquainted with Daniel McNeill, the complainant in the above stated cause; and that he is also acquainted with Daniel Crawford and Malcom Smith, the executors of John McNeill, the defendants in said suit; and witness further states that he is and was acquainted with the following negro slaves, which were in the possession of John McNeill, deceased, at the time of his death, to wit: Fanny and her child Tennessee—Fanny, a woman about 26 or 27 years old; her child is 6 or 7 years of age; that during the year 1840 said Fanny was sickly and *and* of no value to her owner, but was an expense, after her confinement with said child, in the latter part of 1840, or the early part of 1841, said Fanny's health was as good as common until the fall of 1843, when she was sick with the venereal disease for about one month—her medical bill amounted to ten dollars; in the spring of 1844 said negro received an injury on the thigh, which

was operated on and rendered her services worthless for at least three months—her medical bill amounted to $30.

Stokes and his wife Rose. In 1843 said Stokes was laid up with the venereal for a month or more—his medical bill was $10. Since that time witness has been called on to visit said negro once, by Mrs. Mason, who paid the bill amounting to $5. In fall of 1843 was called on to attend Rose, who was diseased for fully three months, and unable to do any thing; nor was she able to perform any service of account during the year 1844; her disease was the falling of the womb and other derangements of her system; her medical bill was about ($75) seventy-five dollars. In the latter part of 1844, or first of 1845, said Rose lost a child, whose medical bill amounted to $20. Rose had other small children, but witness does not recollect their names.

Bill Johnson, in the fall of 1843, had the venereal; was sick about one month—his medical bill was $10. He further states that said negro boy was ruptured badly.

Ellen was sent to witness's house in spring of 1841; she was then about 10 or 11 years old; had a white swelling on her arm and shoulder; she staid there, under medical treatment, till the fall of the same year, then returned home, and in 1842 she was again put under witness's charge, and remained with him about three years. Her services were valueless, and her medical bill was one hundred dollars.

Lorncy was sent to house of witness, for medical treatment, in August or September, 1842; that witness had visited said negro for a month or two previous at the house of Col. John McNeill; she was laboring under chronic diarrhœa. She was returned home in spring of 1843, and in November of that year she died. Her medical bill was about seventy dollars.

Frances, a negro girl, about 11 or 12 years of age, took sick with pleurisy in the month of October or November, 1843, and died; her medical bill was thirty dollars.

Essex, a negro boy, about 10 or 12 years of age, in 1842, or 1843, had a sore leg, and was laid up for some time under medical treatment; witness considers the negro unsound; his services worth nothing up to the year 1845.

Betty, a negro woman, about 40, come under treatment in the fall or summer of 1843, and remained so until 1845; her disease, affection of the womb; her services worth nothing, but required a nurse a considerable part of the time; her medical bill was one hundred dollars.

Witness further says, that the negro Stokes, before spoken of, run away in 1841 or 1842, and was gone two months or more. Witness says, he is a regularly licensed and practising physician, and was the family physician of the late John McNeill, from the year 1838 until his death; and further the deponent saith not.

JAMES A. KELLY.

And the said Martin Haynie, another witness, being carefully ex-

amined, and cautioned, and duly sworn to testify the whole truth and nothing but the truth, doth depose and say, that he knows the defendants in the above suit, and has seen the complainant; that he was employed as overseer on the plantation of John McNeill, deceased, in Coosa county, during the year 1844; that during the spring of 1845 he was present at the hiring of the negroes belonging to said decedent's estate, at his late residence; that amongst the negroes hired, and offered for hire, were Fanny, and Tennessee, her child; Stokes and Rose, his wife, and children; Bill Johnson, Essex, Bill Mississippi, Wash, offered, and no bid; Ellen, Polly, Peter, wife, Nancy, and Milly Ann, no bid; Moses. That H. C. Laughter bid off at said hiring negroes Fanny and Tennessee, her child, at $31; and also Bill Johnson, at 67½ dollars; Stokes, his wife Rose, and three children, were bid off by Wilie W. Mason, for $25; Essex, hired by B. F. Wilson, at 30½ dollars; Bill Mississippi, W. J. McNeill, at $20; Ellen, by Thomas Peterson, at $15; Polly, by B. F. Wilson, at $12; Moses, by James B. Phillips, at $5. That the negro Betty was not hired; she was a sickly negro, and her services not worth more than thirty dollars for that year; and further deponent saith not.

MARTIN HAYNIE.

And William Chapman, another witness, being carefully examined, and cautioned, and duly sworn to testify the truth and nothing but the truth, doth depose and say, that he knows Daniel Crawford and Malcom Smith, the defendants to the above suit, but has no acquaintance with Daniel McNeill, the complainant. That he was at the hiring of the negroes of the estate of the late John McNeill, at his late residence in Coosa county, in the forepart of the year 1845; that witness had attended another hiring in the neighborhood, and would say, that negroes hired as well upon an average, at McNeill's hiring, as at any other place in that vicinity; that witness got a friend to bid off Ellen at said hiring at $15; witness supposes that Ellen was about 12 years old at that date; sometimes complained of her shoulder, but having been kept at light work, did not lose much time; that witness got a friend to attend the next annual hiring at the same place, who bid off said Ellen for 31 dollars; does not know any thing of the value of the annual hire of rest of the negroes spoken of by the other witnesses; but good field hands, from 1840 to 1845, would hire in this vicinity, or the vicinity of the residence of the late John McNeil, at an average of seventy-five dollars; that is to say, men and women, without any incumbrance by children, and who are strong and healthy; that he is a farmer, and lives in the neighborhood of where said John McNeil lived previous to his death; and further deponent saith not.

WILLIAM CHAPMAN.

And the said Samuel Peterson, another witness, being carefully examined, and cautioned, and duly sworn, to testify the whole truth, and nothing but the truth, doth depose and say, that he knows Daniel Craw-

hold and Malcom Smith, the defendants in the above stated suit, but knows nothing of Daniel McNeil, the complainant; that he knows Ellen and Polly spoken of by the other witnesses, and has seen several others of said negroes spoken of, but knows but little about them; the present age of Ellen he supposed to be about 15 or 16 years, and that of Polly about 14 or 15 years; that he lives in the neighborhood where the late John McNeil resided and died; that he is a farmer, and has been in the habit of attending negro hirings for several years in that vicinity, and that the average hire of good, sound, and healthy negroes he would rate at $75 per head, that is to say, for men and women without children or other incumbrance; speaks from 1840 to 1845; that women with a young child witness considers worth not more than from $30 to $40 per annum, and women with two children about $15 to $20 per annum, and women with three or more children would not hire for more than their victuals and clothes; witness states that the city of Wetumpka is situated on the Coosa river, about 30 miles from the late residence of the late John McNeil; that deponent knows nothing of the rate negroes hire for in that vicinity; and further this deponent saith not.

SAMUEL PETERSON.

And Isaac W. Suttle, another witness, being carefully examined, and cautioned, and duly sworn to testify the whole truth and nothing but the truth, doth depose and say, that he knows the defendants, Daniel Crawford and Malcom Smith, and has seen Daniel McNeil; that he formerly resided in the neighborhood of the late John McNeil; that he has been in the habit of attending negro hirings in that vicinity for a number of years; that he was at the hiring of said McNeil's negroes in the early part of the year 1845; that he went there for the purpose of hiring a negro, but did not do so from the fact that the negroes hired too high; he does not consider the negroes claimed by Daniel McNeil, and those spoken of by other witnesses, a good or likely lot of negroes, and by no means would they be classed as such by competent judges; the average annual hire of negroes, good field hands, men and women without incumbrance of children, from 1840 to 1845, he estimates at ($70,) seventy dollars; that a woman with one child would hire for about $40, women with two children about $20, and women with three children would not hire for more than their victuals and clothes per annum; and that H. C. Laughter is not a citizen of Coosa county; Levi G. Boswell, Bennet S. Griffin, J. M. N. B. Nix, S. J. McMorris, Francis J. Hatton, and Andrew Lyle, are all citizens of Wetumpka, or within two miles of that place; that Wetumpka is about thirty miles from the late residence of John McNeil, deceased; that he knows nothing of John Jackson; that this deponent is clerk of the county court for Coosa county, Alabama; and further deponent saith not.

I. W. SUTTLE.

And I do further certify, that the preceding depositions were reduced

to writing by me, and signed by the said James A. Kelly, Martin Haynie, William Chapman, Samuel Peterson, and Isaac W. Suttle, and that I am not of counsel or solicitor for either of the parties thereof.

Witness my hand and seal this 19th May, A. D. 1848.

EBENEZER POND, [SEAL.]
Judge county court, Coosa county, Ala.

Filed 1st December, 1848.
Teste. A. G. GOOCH, *Clerk.*

Published by consent of the solicitors for the parties, 1st December, 1848.
Teste. A. G. GOOCH, *Clerk.*

A.

District court of the United States, for the middle district of Alabama, at Montgomery.

By agreement of E. W. Peck and W. W. Morris, esqrs., solicitors for the parties in the case of Daniel McNeil, complainant, vs. Daniel Crawford and Malcom Smith, executors of John McNeil, said parties appeared by their said solicitors in the clerk's office of said court, on the 1st day of December, 1848, whereupon the following proceedings were had in regard to the matters referred by a decree of said court at fall term, 1847, to the master:

1st. Complainant read bill of sale from complainant to John McNeil, defendant's testator.

2d. David Lawing's deposition. Defendants object to this deposition.

3d. Hamilton Thornton's deposition. Defendants object to this deposition.

4th. Levi T. Brown's deposition.

5th. David A. Cochran's deposition.

6th. Bennet S. Griffin's deposition.

7th. Andrew Lyle's deposition.

8th. Joseph M. N. B. Nix's deposition.

9th. Levi Boswell's deposition.

10th. Francis S. Hatton's deposition.

11th. Henry C. Laughter's deposition.

12th. John Jackson's deposition.

Defendants read the following testimony:

1st. James Goggan's deposition.

2d. Charles K. Cotton's deposition.

3d. Martin Haney's deposition.

4th. Isaac W. Suttle's deposition. Complainant objects to this deposition so far as it embraces the record of county court of Coosa county.

5th. Simeon McLemore's deposition.

6th. Alexander Smith's deposition.
7th. Japheth McNair's deposition.
8th. Dr. James A. Kelly's deposition.
9th. Martin Hayney's deposition.
10th. Wm. Chapman's deposition.
11th. Samuel Peterson's deposition.
12th. Isaac W. Suttle's deposition.

Examination of witnesses introduced by defendants.

Witness, James S. Johnson, who, being duly sworn, deposes and says, he was overseer for Col. John McNeill in 1843, on his plantation in Coosa county, from 1st September till the end of that year; 1, he knows the following negroes then in the possession of said McNeill; a negro man (Stokes) about 35 years old, a moderate hand, a tolerably good wagoner, nothing extra. For that year his hire would be worth $60—not more valuable on account of his being a wagoner. Rose, wife of Stokes, about 35 years old, a very sickly woman, with 2 or 3 children, a boy (Sandy) and girl, (Demetre,) name of other child not recollected. Does not think Stokes and his family together would be worth any hire.

Essex, a boy about 11 or 12 years old, at that time had a sore leg, and was unable to work more than two or three days during the time I was overseer for Col. McNeil; should consider him an expense; if sound, he would have been worth $20 00 hire.

Bill Johnson, he was sick, ruptured, and frequently under a doctor; if he had been sound, I should think his annual hire would be $75, but as he was, not more than $50 00; he was employed in the gin house ginning cotton; he was not as valuable as a sound negro would have been as a ginner.

Bill Miss., a boy about 10 or 11 years old, hire $20 00; a sound negro.

Mose, a boy, supposed age, 8 years old. Squire, also, worth victuals and clothes only. Washington, a little boy, age and size not recollected; not worth any hire. Ellen, a girl, about 10 or 11 years old, sickly, and always under Dr. Kelly, while witness was there; not worth any hire, but an expense. Polly, a girl, 9 or 10 years old; not worth any hire. Fanny, a woman about 25 years old, with one child (name not known,) supposed to be 3 or 4 years old; without the child her hire would be worth $50 00; with her child, about $40 00. Frances, a girl, 14 or 15 years old, hire, after 1st September, worth nothing on account of her being sick; if well, her hire would have been worth $30 00; she died about last of September or 1st October of the year 1843.

Loracy, a woman, about 35 years old, sickly, and died about last September or 1st October, same year; hire not worth any thing.

Betty, a woman about 50 years old, a tolerably good cook; hire worth $40 00.

Witness has no knowledge of any other negroes on the plantation of

Jno. McNeill, while he was overseer, claimed by Daniel McNeil, as he has since been told.

Witness knows Dr. Kelly, who attended the negro before mentioned, as a physician, at the instance of John McNeil. Dr. Kelly was reputed by his neighbors a good physician.

Cross examination by complainant.

Witness says John McNeil had slaves employed on a plantation in Autauga county, and also on gold mines near Goldville; said McNeil resided on his plantation in Coosa county, where I was overseer.

Witness' recollection [is] good as to facts deposed to above; was on the plantation of McNeil about 4 months; does not remember how often Dr. Kelly visited said negroes; he visited Rose, Bill Johnson, Frances, and Loracy.

Witness knows Bill Johnson was ruptured from personal examination; had no other complaint known to witness.

Witness guesses Essex was 11 or 12 years old from his appearance; was large enough to plough, if he had been well; does not know that Dr. Kelly was ever sent for particularly to attend Essex; a likely boy, except the sore leg.

Does not know what was the matter *of* Rose, nor how often the doctor visited her.

Bill Miss., witness reckons was 11 years old, from his size and appearance; a tolerably likely boy.

Mose, a likely boy.

Washington or Squire, a likely boy.

Polly or Rebecca, a tolerably likely girl.

Ellen, if healthy, would have been a likely girl; does not know what was the matter with her.

Fanny, a small woman, but likely, quick, and smart; a good hand to pick cotton and other ordinary work about a plantation.

Betty, a healthy woman; tolerably good cook, and was the family cook of Jno. McNeil; she looked to be 50 years old. Witness has owned one negro, and hired two in his time.

Knows nothing of the value of the hire of negroes, except in the neighorhood where I live in Coosa county, nor in Montgomery or Wetumpka. Knows nothing of these negroes except during the 4 months he was in the employment of Col. McNeil; Betty was said to be the mother of Fanny.

Wm. W. Morris, witness for defendants, being duly sworn, says, a conversation, a few days after the decree in this cause, with complainant, he was requested by complainant to say to defendants, not to hire out the negroes claimed by complainant the ensuing year, but to hold them in their possession; he thought they could compromise the matter and redeem the negroes, if upon an adjustment of the matters any thing should be found due to defendants; in the same conversation complainant desired me to take possession of the negroes for him, and

him until the matters in difference between the parties could be adjusted, but witness refused to do so. Complainant at the same time said he would charge no hire for the negroes, he would come and settle up and take away the negroes in February or March.

Complainant objects to this testimony.

Cross examination by complainant.

Witness says he delivered the message of complainant to defendants some time in December, 1847, and advised them not to hire out the negroes; complainant in same conversation said they were family negroes, and he wanted to get them; he thought there would not be much difference in the account according to the proof of hire by his witnesses. Witness says defendant Smith told him complainant came over a week or two before the last May term of this court, but failed to make the compromise; and then, witness says, he advised defendants to hire out the negroes.

Defendants object to this cross examination.

Witness for defendants.

Reubin Phillips deposes and says, he lives in Coosa county; a first rate field hand would be worth this year from $80 to $100 hire; an average negro fellow would hire for $70 or $75; a good wagoner would not be worth more than common field hands.

Witness knows Fanny and child Tennessee; worth this year not more than $40 hire; the child old enough for a small nurse.

Bill Miss. he knows; he would hire this year for $65 00; a tolerable hand, about 15 years old.

Mose and Wash both small boys; worth this year about $30 00; Mose about 13 or 14 years old; Wash about 9 or 10 years old.

Rose, a woman, had two, perhaps three, children. Stokes, a man, Rose, his wife, and 2 or 3 children, worth this year not more than their victuals and clothes; Rose, the woman, looks to be unhealthy; the children too young to work; and Stokes only a tolerable hand.

Essex, a boy between 16 and 18 years old, worth this year about $40 00; he has sore legs; in April last he had large sores on both legs so as to render him unable for a few days to plough; since that time the sores have improved, but within the last 4 or 5 weeks the sores have broken out about the ankles, but he is now able to work; witness says he saw these negroes in July last; Peter, and Nancy Holland, alone, worth this year about $15 00.

Milly Ann, a girl, worth this year $15 or $18.

Ellen, a girl some 16 or 17 years old, worth about $60 or $65 this year.

Polly or Becky, about 14 years old, worth about $60 00 this year.

Witness says negro boys are not usually considered worth more than their victuals and clothes till they are 9 or 10 years old; from 10 to 13 inclusive, the yearly hire of boys would increase in value about

$5 00 a year; at 9 or 10, worth $10; at 13, $25 00; at 15, [illegible]; at 18, $80 00 to $100 00.

Girls are not worth hire till 9 or 10 years old.

Cross examination by complainant.

Witness says Peter Holland looks not to be healthy, his wrist or hand appears to be crooked or out of place, and from his looks should not think him worth more than his victuals and clothes; never had any talk with the negro; he heard others talk with him, and ask him what he could do, if he could split rails; his reply I could not understand, he shook his head and mumbled something I could not understand; witness further says from what he saw of the negro, he would not have him on his place.

Witness re-examined by defendants: Says he has lived in Coosa county about 9 years, knows the negroes were advertised annually for hire from 1845 to the present time; was at one hiring this year, which was fairly conducted as far as he knows; knows at the hiring which he attended one of defendants run up the negroes to what they were worth in his opinion.

About 12 months since witness says he heard a report that Peter Holland was deranged, which report was common in the neighborhood.

Complainant objects to this last answer.

H. P. Lee, witness for complainant, being duly sworn, deposes and says, he is an auctioneer in the city of Montgomery, and has been some ten or twelve years, has frequently hired negroes as such auctioneer; that from 1840 to the present time, the average yearly value of men and women, plantation hands, would be in Montgomery county $100 00 each; a woman with an infant child would be worth about $50 00 a year; a woman with a child from 2 to 3, 4 or 5 years old, worth $70 or $75; a woman with 2 children from 2 to 6 years old, worth $60 00; a man, a good wagoner, from 25 to 45 years old, worth $125 00 a year.

A plantation blacksmith from 25 to 45 years old, worth $200 00.

A woman 50 years old, a good family cook, in the country worth $100 00 a year.

Girls and boys at 9 years old would hire for $10 or $15 in the country a year.

Girls and boys 12 years old in the country, worth $25 or $30.

A girl 10 years old in 1841 would be worth from that time to the present, an average of $55 00 a year; boys of the same age for same time would be worth an average of $60 a year.

Witness says it is customary for the hirer of slaves to furnish the negroes all necessary clothing, pay the taxes, and doctor's bills.

A negro man 50 years old to attend a saw-mill, average value $100 a year.

A woman, a good family cook, in the country, from 35 to 40 years old, worth $110 a year.

Witness says he has deposed above to the hire of negroes in Montgomery county, but thinks there can be but little, if any, difference between their yearly value in Montgomery county, and in Coosa, and Autauga counties.

Defendants object to the testimony of this witness in relation to the clothing and physician's bills of hired negroes, and to the value of hire in Montgomery county.

Cross examination by defendants.

Witness says he never, as he now recollects, hired any negroes in Coosa or Autauga; he judges of their yearly value in these counties from information derived from others, and from having lived a number of years near those counties; the custom of administrators and executors is generally to require hired negroes not to be taken out of the county, or employed on steamboats or railroads.

Witness says a plantation blacksmith with a rupture, if so bad as to prevent him from work occasionally, would not hire for so much as if sound; but if the rupture did not prevent him from work, it would make no difference in his hire.

A man 35 years old, and his wife, a woman of general bad health and unable to work, with two infant children, worth about $110 a year.

Witness further states, it is customary in this county to hire negroes belonging to estates of deceased persons, either at the court-house, or at the late residence of the deceased.

Defendants read the following depositions:

1. James Ramsey's deposition.
2. Henry C. Laughter's deposition.
3. John Brown's deposition.
4. Hamilton Thornton's deposition.
5. The answer of defendants, and exhibits.

S. D. Watson, witness for defendants, having been duly sworn says: The distance from Holly Springs, Mississippi, to the late residence of defendants' testator, is about 350 miles. The expenses of conveying 14 negroes, consisting of men, women, and children, from Holly Springs, Mississippi, to the late residence of defendants' testator, would be about $117 00; time necessary for the journey 24 days.

Complainant admits allowance of deduction in hire when negroes [were] sick and unable to work; and reasonable doctor's bills, if proved to have been paid by defendants.

Defendants object to all the foregoing testimony adduced by complainant, as to the value of the hire of slaves in any other than the place or vicinity where defendants' testator lived, or where the slaves were hired or kept.

Defendants proposed to adduce proof of the hiring of the slaves on the 24th July, 1848, to which time, they alleged, the hiring had been postponed in compliance with the request of complainant; but declined

to introduce further testimony as to the alleged cause of delay in the hiring of said slaves, upon an intimation by the master that he doubted whether he, under the decree, could consider testimony as to delay in hiring said slaves as relevant.

Teste: A. G. GOOCH,
Clerk and master, &c.

Filed 7th December, 1848.

Teste: A. G. GOOCH, *Clerk.*

District court of the United States, for the middle district of Alabama.

DANIEL MCNEILL
vs.
MALCOM SMITH and Daniel Crawford, esqrs. } In chancery.

In pursuance of a decretal order, made at the November term, 1847, by said court, in the above entitled cause, whereby the master of said court was directed to take and report an account between the said parties upon the basis of said decretal order, I, Albert G. Gooch, master of said court, respectfully report:

1st. That the value of the slaves mentioned in the pleadings and evidence in the cause is seven hundred and fifty dollars, $750 00, for the year 1840; for the year 1841, $1,400 00; for the year 1842, $1,200 00; for the year 1843, $950 00; for the year 1844, $925 00; for the year 1845, $925 00; for the year 1846, $950 00; for the year 1847, $950 00; and for the year 1848, $950 00.

In estimating the annual value of said slaves I have come to the best conclusion I could from all the testimony adduced by the parties, and have computed no hire for the slave Anthony, nor have I made any charge for those slaves that died, or became valueless after those events; neither have I made any charge for the slaves delivered to Read after he received them; and the yearly value as stated is exclusive of medical bills, and loss of time by sickness.

2d. That on the 1st of January, 1841, when the hire of said slaves for ten months of the year 1840 became due, there was due, upon the note referred to in the decree, of principal and interest, the sum of $7,904 34, from which I deducted the sum of $750 00, leaving a balance on that day of $7,154 34; on the 1st of January, 1842, when the hire of said slaves for the year 1841 became due, there was due upon the said note, of principal and interest, the sum of $7,726 68, from which I deducted the sum of $1,400 00, as the value of said slaves for the year 1841, leaving a balance due on said note of $6,326 68, on the 1st January, 1842.

3d. That on the 19th August, 1842, when the payment of $3,500 00, referred to in the said decree, was made, there was due upon the said note the sum of $6,650 06, of principal and interest, from which I have deducted the said sum of $3,500 00, leaving a balance due on said note on that day of $3,150 06.

1845.

4th. That on the 1st of January, 1843, when the hire of the remainder of said slaves became due, there was due upon said note, of principal and interest, the sum of $3,241 06, from which I have deducted as the value of the said slaves for the year 1842 the sum of $1,200 00, leaving a balance due on said note on that day of $2,041 06; on the 1st of January, 1844, when the hire of the remainder of said slaves for the year 1843 became due, there was due upon the said note, of principal and interest, the sum of $2,204 34, from which I have deducted, as the value of the said slaves for the year 1843, the sum of $950 00, leaving a balance due on said note on that day of $1,254 34; on the first of January, 1845, there was due upon said note, of principal and interest, the sum of $1,354 68, from which I have deducted the sum of $925 00, as the value of the remainder of said slaves for the year 1844, leaving a balance due on said note on that day of $429 68; on the 1st of January, 1846, there was due on said note, of principal and interest, the sum of $464 05, which I have deducted from the value of said slaves for the year 1845, estimated, as already stated, at $925 00, so that on that day the principal and interest of said note were extinguished, and the annual value of said slaves up to that time, after deducting the said payment of $3,500 00, exceeded the balance of principal and interest on said note by the sum of $460 95.

5th. That I have added to the said sum of $460 95 the said estimated value of the remainder of said slaves for the year 1846, 1847, and 1848, and the aggregate amount of the annual value of said slaves, after extinguishing the principal and interest of said note, will be on the first of January, 1849, the sum of $3,310 95, exclusive of interest, due the complainant.

6th. In stating the foregoing account I have been guided by the said decretal order, the pleadings and exhibits in the cause, the depositions read at the hearing, the depositions taken by the parties to be read before me, and the examination of witnesses by me, as stated in the accompanying document, marked (A.)

I further report, that in taking said account, the solicitors of the said parties were present.

All of which is respectfully submitted.

December 7th, 1848.

A. G. GOOCH,
Clerk and master.

Filed Dec. 7th, 1848.

A. G. GOOCH,
Clerk and master.

District court of United States, sitting for Montgomery, Alabama.

DANIEL MCNEILL
vs.
MALCOM SMITH, Daniel Crawford, exrs. of John McNeill.

In chancery. December term, 1848.

The said defendants by their solicitors, at this term, file the following exceptions to the master's report in this cause:

1. The report is illegal and insufficient, because it does not set forth the description, number, and names of the negroes in controversy. the hire of each respectively for each year, hired or possessed; the names or description of those who died; the date of decease, and calculation of annual hire to such date or dates on each of such slaves respectively; and because said report does not disclose which of said slaves became or were valueless, nor at what period, *now* what *here* is given to such period, and what hire is given afterwards, nor the loss [of] time of each by sickness or otherwise, nor physician's bill chargeable to each respectively.

2. The report is erroneous, because it estimated hire on said negroes for the whole of the year 1840, when in fact testator received none of said slaves until the 20th of January, 1840, and was, say to the 1st March following, on the road with them to his residence.

3. The report is erroneous, because it calculates and charges hire on other negroes than those claimed by Daniel McNeill on the appraisment day, as shown by the testimony of A. Smith and J. Goggins, taken in this cause, which is referred to and made a part of this exception.

4. Said report is incorrect, because it charges hire on the negroes taken from the possession of testator, and traded by complainant to Paul C. Read for a tract of land for which complainant has a credit as shown in this report.

5. The calculation and allowance as credits are incorrect on the note due testator from complainant as shown in the report.

6. The report does not disclose the names nor description of the negroes, whose hire is therein estimated for the year 1842 at $1,200 00, nor the value of the hire of each separately.

7. The report does not disclose the names nor description of such of said slaves as testator died possessed of, nor the number, or description, or the date at which they came to the possession of testator, nor of the names and description of said slaves which came to the possession of defendants as the executors of testator, nor the date of such possession.

8. The report is incorrect, in this: It fails to estimate the value of the hire of said slaves according to the place or neighborhood where hired or possessed, and because defendants are charged therein with hire greatly beyond what said slaves have hired for since the death of testator, or the value of their hire whilst in his possession.

9. Because said report does not take into consideration the fact that Daniel McNeill, by his own act, arrested the hire of said slaves in the beginning of the year 1848, requesting the executors to keep them in their possession, and not hire them, that he would come and compromise, whereby said hiring was delayed until the 24th of July, 1848;

1846.

Daniel saying to, or sending word to, the executors that if they would comply with his request he would charge no hire; and because the register has declined to give any weight to the proof of the above facts, but has estimated hire on said slaves for the whole of 1848.

10. Because said report fails to give any weight to the testimony of a number of witnesses who knew the slaves possessed by defendants, and describes them and fixes their average annual hire; and because said report estimates the hire of said slaves according to the opinion of witnesses of the value of slave hire at points remote from where they actually were possessed or hired, and mainly by witnesses who knew nothing of said negroes, and never saw them.

Wherefore defendants pray that the above exceptions be considered and sustained; and that all the evidence connected with said reference be certified to the chancellor by the register, as an appendage to his said report.

W. W. MORRIS,
Sol. for defendants.

Filed December 8th, 1848.

A. G. GOOCH, *Clerk.*

District court, U. S.

DANIEL McNEILL
vs.
DANIEL CRAWFORD,
Malcom Smith.

To honorable chancellor of said court. The petition of defendants shews, that at the November term of said court, 1847, a decree was rendered, which made a part of this petition, directing the master to state an account between the parties in this suit; the proof is clear that on the day that the personal estate of John McNeill was appraised, the complainant was requested to make out a list of the property he claimed from said estate, that said appraisers might note the fact, to the end that defendants might be advised of the same and act accordingly; for the number and names of said slaves so stated on said list, defendants beg leave to refer to the testimony of A. Smith and J. Goggins, and the answer of defendants, which is made a part of this petition.

By the terms of said decree, as construed by defendants, they were under the impression that none but the negroes of which John McNeill died possessed, claimed by Daniel, to wit, the same as set forth in said Smith and Goggan's testimony, and their increase, were embraced in said reference. But the master, under his construction of the terms of the decree, has decided that he is bound to take an account of hire of all the negroes named in the bill of sale from Daniel to J. McNeill (except Anthony), during the time *which* testator had them in his possession; when, in fact, it is admitted in complainant's bill that Rial, Jim, Rebecca, Read, and Harriett were taken from the possession of said testator, in August, 1842, by complainant, and appropriated to his own

use. The answer, also, in response to the bill, shows that Betty was sold or exchanged with said John McNeill for negro Mahala, or Mahala and child. Testator's right to said Betty has, as defendants have been informed, been admitted since the rendition of said decree, and on after hearing that complainant had said that the judge had given him more than he expected, to wit, Betty. Defendants obtained a subpœna for Lewis Kennedy, who told affiant he knew the fact, but has been unable to obtain the attendance of said Kennedy. That after defendant arrived here to attend this court he learned that complainant would contend, under said decree, for negro Harriet, (not the one sold to P. C. Read,) not knowing of any such negro in the possession of defendants. Affiant immediately (on Sunday last) went to Autauga county, where some of said negroes staid for a time when brought to this State, and there learned to his satisfaction, though not in such manner as to make it proof, that some years ago there was a little girl, named Harriet, daughter of Rose, who died; that Dr. Vincent was the attending physician, who, defendants are advised, now resides in Mississippi, or Louisiana. This information was derived from some of the family negroes; defendants believe that proof of such fact can be obtained, if opportunity be offered. The proof shows that the negroes were received as collateral security for money advanced to McNeill—and what the negroes did actually hire for in the years '45, '46, and '47. Notwithstanding this, the said complainant is proceeding to charge defendants with greatly beyond the actual receipt of hire or benefit to testator, regulated, not by the hire of the country in which deceased lived, but by that of Montgomery and Wetumpka.

The proof further shows that Daniel and John McNeill were related; were on the most friendly and intimate terms; the money loaned to Daniel by said John, to relieve him from embarassment; the negroes delivered into said John's possession in confidence and trust.

In view of all this, it is insisted that defendants should not in justice be bound for what the negroes would hire for in Montgomery or Wetumpka, but what was the actual benefit of said negroes to McNeill while in his possession, and what has been their value to defendants since his death, all parties having conducted fairly in the premises.

1. Therefore, defendants pray that the proper construction of said decree be settled by the court. 2. That said decree be altered or reformed, so as to make defendants accountable for no more than the actual benefit derived from the possession of said slaves, all things conducted fairly; and that said decree may be reformed in any other manner that may secure justice to the parties; and pray that this may be taken as a petition for a re-hearing, for the purposes above set forth. Defendants here add, that the construction of said decree by the register has taken them by surprise; that, an opportunity given, they will be able to prove that negro Betty was exchanged for Mahala in the early part of 1842, according to complainant's admissions.

DAN'L CRAWFORD.

Sworn to and subscribed before me, this 5th December, 1848.
Teste, A. G. GOOCH, *Clerk*.
Filed 6th December, 1848. A. G. GOOCH, *Clerk*.

Wednesday, December 6th, 1848.

DANIEL MCNEILL
vs.
DANIEL CRAWFORD and Malcom Smith, executors, &c. } In chancery.

This day came the defendants, by their solicitor, and submitted a motion upon the petition of said defendants; and the grounds of said motion, as contained and set forth in said petition, being heard and understood, it is considered and adjudged by the court that said motion be overruled.

Saturday, December 9th, 1848.

DANIEL MCNEILL
vs.
MALCOM SMITH and Daniel Crawford, executors, &c. } December term, 1848. In chancery.

This day came said parties by their solicitors; and the exceptions of the defendants to the report of the master made under the decree of this court, at the November term, in the year one thousand eight hundred and forty-seven, came on to be heard; and, after argument, it appears to the satisfaction of the court that the said exceptions are not well taken. It is therefore ordered, adjudged, and decreed, that the said exceptions be, and they are hereby overruled; and that the said defendants pay the costs of said exceptions.

The said cause was then submitted for a final decree; and it appearing, to the satisfaction of the court, that the following named slaves, being a part of the slaves received by the defendants' testator, from the said complainant, as alleged in his bill of complaint, came to the hands of the said defendants as the executors of the said testator, to wit:

Fanny and her child Tennessee, Stokes, Rose and her children, Demetre and Sandy, Essex, Bill Johnson, Bill Mississippi, Moses, Washington, (sometimes called Squire,) Ellen, Polly, (in the bill of sale called Becky,) Peter, Nancy, and Milly.

It is therefore ordered, adjudged, and decreed, that the defendants deliver the said slaves, and any children that may have been born since the filing of complainant's bill in this cause, and are now alive, to the said complainant or his agent, on demand, after the first day of January next, (1849.)

It is further ordered, adjudged, and decreed, that the complainant recover of the said defendants the sum of three thousand three hundred and ten dollars and ninety-five cents, the sum reported to be due to the complainant by the master in his said report, to be levied of the goods and chattels, rights and credits, of the said testator in their hands to be administered; for which let an execution issue. It is further ordered, adjudged, and decreed, that the said defendants pay the costs in this behalf expended.

It is further ordered, that the master be allowed the sum of forty dollars for his services in taking said account and making his report, to be taxed in the bill of costs.

Saturday, December 9th, 1848.

DANIEL MCNEILL
vs.
MALCOM SMITH and
Daniel Crawford, ex'rs, &c. } In chancery.

In the above entitled cause the said defendants, by their solicitor, pray an appeal to the Supreme Court of the United States, at the next term thereof, which is granted by this court.

It is ordered by the court that the said defendants execute a bond, conditioned as usual, payable to said complainant, in the sum of sixteen thousand two hundred and twenty-one dollars and ninety cents, with good and sufficient sureties, to be approved by the judge of this court, within twenty days from this day.

Whereupon the court adjourned sine die.

WM. CRAWFORD.

UNITED STATES OF AMERICA, *ss.*

Know all men, that we, Malcom Smith and Daniel Crawford, executors of the last will and testament of John McNeill, deceased, as principals, and W. W. Morris as their security, are held and bound unto Daniel McNeill in the penal sum of sixteen thousand two hundred and twenty-one $\frac{91}{100}$ dollars; for the payment of which we bind ourselves, our and each of [our] executors, administrators, heirs and assigns; sealed with our seals, and dated this the ninth day of December, 1848.

The condition of this bond is such, that whereas the said Daniel McNeill has obtained a decree against the said Smith and Crawford, on this day, in said court, sitting as a court of equity, in the cause of Daniel McNeill against Malcom Smith and Daniel Crawford, executors as aforesaid, from which decree said court has granted an appeal to the Supreme Court of the United States:

Now, if said Smith and Crawford, executors as aforesaid, shall prosecute their said appeal to effect, and pay the said Daniel McNeill all such cost and damages as may be awarded against him by the said Supreme Court of the United States, and shall abide and perform such decree as may be rendered against them by said Supreme Court, then this obligation to be void, otherwise to remain in force.

MALCOM SMITH, [L. S.]
DANIEL CRAWFORD, [L. S.]
W. W. MORRIS. [L. S.]

I approve the within bond this 9th day of December, 1848.

WM. CRAWFORD, *Judge.*

Filed 9th December, 1848.

Teste: A. G. GOOCH, *Clerk.*

I, Matt. Gayle, clerk of the district court of the United States, for the middle district of Alabama, do hereby certify, that the foregoing two hundred and forty-six (246) pages contain a true and correct transcript of the record and proceedings in the suit of Daniel McNeill against Malcom Smith and Daniel Crawford, executors of John McNeill, deceased, as they remain of record in this office.

In testimony whereof, at office in the city of Montgomery, I have hereunto set my hand and affixed the seal of said court, this [L. S.] 6th day of November, in the year of our Lord, one thousand eight hundred and forty-nine.

MATT. GAYLE,
Clerk, Mid. Dis. of Ala.